IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

RETRACTABLE TECHNOLOGIES INC.	*	Civil Docket No.
	*	2:07-CV-250
VS.	*	Marshall, Texas
	*	
	*	November 3, 2009
BECTON DICKINSON & COMPANY	*	1:30 P.M.

TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE DAVID FOLSOM
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF:
MR. ROY W. HARDIN
MR. GEORGE E. BOWLES
MR. STEPHEN D. WILSON
MR. MARK R. BACKOFEN
Locke Lord Bissell & Liddell
2200 Ross Avenue, Suite 2200
Dallas, TX 75201

MR. OTIS CARROLL
MS. DEBORAH RACE
Ireland, Carroll & Kelley
6101 So. Broadway, Suite 500
Tyler, Texas 75703

APPEARANCES CONTINUED ON NEXT PAGE:

COURT REPORTERS:
MS. SUSAN SIMMONS, CSR
MS. JUDITH WERLINGER, CSR
Official Court Reporters
100 East Houston, Suite 125
Marshall, TX 75670
903/935-3868

(Proceedings recorded by mechanical stenography, transcript produced on CAT system.)

APPEARANCES CONTINUED:

FOR THE DEFENDANT: MR. DAVID J. BECK
MR. ALISTAIR B. DAWSON
Beck Redden & Secrest
One Houston Center
1221 McKinney, Suite 4500
Houston, TX 77010

MS. LISA J. PIROZZOLO
Wilmer Cutler Pickering
Hale and Dorr
60 State Street
Boston, MA 02109

MR. W. DAVID CARTER
Mercy Carter and Tidwell
1724 Galleria Oaks Drive
Texarkana, TX 75503

* * * * * *

P R O C E E D I N G S

COURT SECURITY OFFICER: All rise.

(Jury in.)

THE COURT: Please be seated.

MR. HARDIN: May it please the Court.

THE COURT: Is everyone comfortable with what the temperature is?

Let us know if you're not. Thank you.

Go ahead.

THOMAS J. SHAW, PLAINTIFF'S WITNESS, SWORN

DIRECT EXAMINATION CONTINUED

BY MR. HARDIN:

Q. Mr. Shaw?

A. Yes, sir.

Q. We learned about your trip to Germany and your filing of the patent that became the '733 patent in this case, just before lunch.

Now, before we move on to the story of -- of the other patents in this case, I want to ask you some questions about your understanding of how you accepted funding from the SBIR grants that affects the products that your company makes and the patents you own.

Do you understand that?

A. Yes, sir.

Q. Okay. Now, the first grant, that first grant period that -- that you received money from, from the government, was from May of 1992 to December of 1992. What did you accomplish with the money that the SBIR grant from the National Institute of Health gave you?

A. I took the initial design I had and the one that I was injected with and reduced it down to the 3cc size.

Q. Okay. And that was the design where the needle is drawn up into the syringe body using a spring or elastomer in the back?

A. Yes, sir.

Q. Is that the syringe type that the larger size was used in Bonham, Texas, that we saw, giving a much younger you an injection on the film?

A. Hey. Yes.

Q. Now, was it -- is it -- was it your understanding that the government had -- has rights in any -- in that early product?

A. Yes. They -- they have what's called march-in rights. And under the SBIR program -- and, again, he's asking me my understanding -- march-in rights are that if I take a grant and reduce something to practice, and then I don't manufacture it and I don't license anybody else to manufacture it, the government would have the right to have somebody else manufacture it, because they invested in it with the idea that it was going to get out to the public.

Q. Okay. Now, after that first grant period ended and before the second period, there was a gap; am I correct? There was a gap between -- your money ended.

A. Right.

Q. And then there was a gap of some months before the second grant period started.

A. That's correct.

Q. Okay. Now, did you make any important discoveries in that period, in that gap period?

A. It was -- it was that period that I was working on the write-up that I wasn't funded, that I came up with the retainer method with -- well, I guess building on the reference -- and so that -- that was that discovery period.

Q. Now, you then got a pretty substantial grant -- you called it a Phase 2 grant -- to try to bring these things up to manufacturable condition, correct?

A. Yeah. It was $600,000.

Q. Okay. And what did you use those funds for?

A. I took that money and took that new concept and re -- and reduced it to practice and started making syringes that became the Pop-N-Lok and, ultimately, the VanishPoint and the family of patents that we're currently using.

Q. Okay. And what is your understanding -- are these -- these patents all refer to a government right in the patents themselves, correct?

A. Right.

Q. And what's your understanding of that right?

A. My understanding of that is, again, because it was reduced to practice, they have march-in rights. And that means if I don't make the product and I don't license the product, then the government would have the right to come in and have somebody else make the product.

And my understanding is that those rights would be somewhat limited in that some of the technology was developed during unfunded periods. And I -- and I paid for the patents myself, but they should have rights, if I'm not making the technology, and I believe they do have some limited march-in right.

But as long as we're making the product, it's my understanding that they don't -- they don't have march-in rights unless we're not -- if we're marching -- they don't march, I guess is the easiest way to think about it.

Q. Okay. Now, let's take -- take you back now. We had left you at -- you were in Germany, but you were coming back to the plant. You had been -- where had you been operating out of before you went to the facility in Little Elm, which you spoke of earlier this morning?

A. Originally, under the -- when we first started, it was in Lewisville, that storefront where -- when Kathryn was talking about she first came to work, we were in a little storefront down there on 622 South Mill in Lewisville.

Q. And that was that little storefront picture?

MR. HARDIN: Do we have a picture of

that, 425 (sic) South Mill?

Q. (By Mr. Hardin) Now, in that facility, did you actually make -- is that the facility you were operating out of?

A. Well, there were actually three bays of that little facility right across from the grade school. And in the third one, we had a clean room, and in the other rooms, we were doing design. And it was in those buildings, yes.

Q. Okay. And you -- you mentioned at that time -- so you had a clean room so you could make sterile product --

A. Correct.

Q. -- for testing.

And you talked about product that you were making -- I backed up. This is before you put a collar on the back. You told them you made something called a Pop-N-Lok?

A. Right.

Q. Is this an early example of that design?

A. After Clarence made the jig and came back and told me it would work, then we immediately turned around and made that, which actually demonstrated the first donut on a needle-holder with the spring in front.

So that's when I cut the rod off, and we made

that one.
Q. Okay. And the products that you were making in this -- in this timeframe, were you offering those products for sale?
A. No, we were not.
Q. Why not?
A. Well, we didn't have permission to market from the FDA, and it is an FDA-regulated product, and actually, we weren't ready to sell. And so everything we did either clinically or otherwise was under a written, signed agreement that we knew the person using it understood what the -- what level of sterility and what they were dealing with, because you never know what somebody might do with a syringe if they're laying around.
Q. Okay. What was the reaction that you were getting from putting the product out there, the initial products?
A. Well, I mentioned earlier with that safe -- with the Pop-N-Lok syringe, when we went out there to the facilities, they were really excited. And it was kind of a wow factor, and they were anxious for us to hurry up and get them to production so they could start using them and not having to deal with the sticks.
Q. Now, in 1996, there's been mention of a

company called Saf-T-Med. In 1996, were you even aware that there was another company trying to produce a retractable syringe?
A. No, sir.
Q. Now, did you -- did you send -- I'm sorry?
A. No.
Q. Did you send samples out for consideration by manufacturers, this early prototype?
A. No, sir.
Q. Okay. Didn't you -- did you not send some to Becton Dickinson?
A. Were you asking me in reference to Saf-T-Med?
Q. Saf-T-Med, right. You didn't -- even though they were --
A. No, I didn't know they existed.
Yes, we did send syringes out both for clinical, and we also sent samples to Becton Dickinson.
Q. Okay.
MR. HARDIN: Can I see PX68, please?
Q. (By Mr. Hardin) Is this a cover letter from you forwarding some samples for them to look at?
A. Yes, sir.
Q. Now, in 1996, do you recall of some clinical testing that was being done to see -- if there was clinical testing being done to see if the VanishPoint

syringe could be used for accessing veins and arteries?

A. Well, yes. That was going on, and the way that came about is we were getting ready -- we were hoping to be in full production in '97, and then we had to finish up our labeling with the FDA permission to market.

And the question came up -- we had proved the syringes worked for injections, but they had never been used in veins or arteries. And the question was, would that retraction damage the vein or the artery.

And since we were the first people to make retractable syringes, the FDA -- we needed to submit a study on that before we put it on our labeling. And so we went to the Dallas Presbyterian Hospital, and we conducted a clinical there.

Q. And what were the results of those clinical tests in 1996?

A. It was uniformly liked, and they were anxious to get the product, and it was well-received. And it didn't create any problems. And so we did get permission to market it for that and also for the other uses.

Q. Now, these clinicals were in approximately September of 1996?

A. Yes, sir.

Q. And was there a Dr. Goodman involved with those clinicals?

A. Yes, sir. He was the head of Infection Control.

Q. And did he at some point, shortly after those clinicals a few months later, urge that Presbyterian Hospital get your product into the hands of nurses and healthcare workers?

A. They had had 126 accidental sticks that previous year before we went there. And as Infection Control, he was -- expressed concern and wrote a letter stating that he felt the product, I think, was a medical necessity or something along those lines.

Q. Okay.

MR. HARDIN: Can I see Plaintiff's Exhibit 427?

Q. (By Mr. Hardin) Dr. Goodman's position -- while we're waiting for the document, Dr. Goodman's position with Presbyterian Hospital was what?

A. He was a doctor, but he was also head of Infection Control.

Q. Okay.

MR. HARDIN: Looks like we have a technical problem. We'll come back to that.

Q. (By Mr. Hardin) About this time when the product was being tested for use in veins, first of all, was the product recommended for use in veins?

A. Yes, it was. It was fine.

Q. And so -- and so when it was being used in veins, did a new problem come to your attention?

A. Well, what actually happened is we were finishing the labeling, and it came to my attention that also syringes were occasionally -- not very frequently, but sometimes when you had a small child, they would use a syringe needle because it was a smaller gauge, to draw -- to draw blood from a child, for example, when they had a small vein.

And so the question was asked: What's going to happen if they take -- if the hospital isn't using anything but retractable syringes, and they need to draw blood, what's going to happen when they draw blood and now you got a whole retractable syringe full of blood, okay?

So to find out whether we were going to have some kind of a labeling restriction, I asked Judy, who was one of our engineers, to go downstairs and simulate what that would be, how that would work.

And so she took red fluid and drew it up. And then she took it over to a vacuum tube and stuck it down in there and pushed the red fluid in there. And then it was supposed to retract, but that rubber seal that I told you would never let go of the steel needle, well, it didn't.

Q. Can you -- I think we have a blood tube up there so the jurors can better understand the problem that you were trying to describe.

A. I don't have any red fluid so that will be -- you will have to imagine with me.

Okay. So the person's drawing up the fluid. And then after they're done, they go over -- and, again, you wouldn't recommend this because they have to carry a contaminated needle or have the blood tube right there.

But then they would put that down in the tube and then -- let's see. I forgot to draw up the red fluid. Now you know why I'm not the clinician.

But anyway, when it gets down here and you retract it, it doesn't let go of that needle, and then it snapped back. And when it snapped back, she came back and reported, well, there's no problem; they can use it to draw blood.

But she said it left these little teeny size of the head of a pin, just little teeny red dots. And it didn't show up much, because you had the red dot on top of the -- on the red tube, but you could see that little bit of splatter.

Q. Now, were you concerned about that?

A. Well, yes, because we wanted our syringe to be suitable for every purpose.

And so I told her to go back downstairs and try that again. Maybe something went wrong. And she came back and said, no, she did about ten of them. Everytime, there's just little bitty drops of splatter that were being left on this.

If that needle was held back until it -- until it popped loose like that, I guess it caused it to accelerate and jerk out of there.

Q. Okay. Hold that up for a minute. Here's the letter we were trying to find. This is the letter from Dr. Goodman?

A. Yes, sir.

Q. So he's actually referring to tests that had happened the prior fall?

A. Yes.

Q. Okay. I'm writing this letter as the Medical Director of Infection Control at Presbyterian Hospital of Dallas to urge you to purchase the VanishPoint syringe for use in our hospital.

This is an issue that demands your immediate attention. I have reviewed the clinical studies, including those done at Presbyterian Hospital at Dallas, have used the device myself, and have reviewed the cost savings associated with its use.

The automatic retraction of needle directly from the patient eliminates opportunities for accidental needlesticks far more effectively than any other available, quote, safety syringe, unquote.

So this was -- was -- Presbyterian Hospital, did you consider it to be a great candidate for a possible sale?

A. Yes, sir, because when we were over there and we did all these clinicals, a lot of the doctors became shareholders because they were excited about the technology. So now we had the head of Infection Control, numerous doctors, and we had also been in a successful clinical.

So I felt like, yes, it was very important, and it was going to be our first big customer when we started.

Q. Okay. I had to interrupt your story, though, about the venting, so I apologize. I thought that was important enough to let the jury see.

But now, you were telling them about this problem with little, small drops. Are those sometimes called splatter?

A. Yes.

Q. Okay. And you had noticed that that could occur with your VanishPoint syringe when it's used in this manner in the tube?
A. Yes.
Q. And what did you do next?
A. Well, just -- just so we don't get the timeline wrong, we're now moving toward production.
Q. Okay.
A. And so we already had syringes that were out there, and they were retracting just fine. And we weren't having a problem with that, but to address the problem of splatter, I suggested that Judy and Gary, our toolmaker, go down and see if by putting a vent in there so that the -- at the end of the injection, a puff of air wouldn't come out the front, because I thought, well, maybe when it retracts, the air -- it's retracting fine, but maybe the air is coming out not -- not from the back. It's coming out from the front. And that air is blowing the fluid that's left in the needle out and causing those little droplets.
And so they -- they went ahead and vented it.
Q. Okay. And did -- that idea of using those vents in combination with your tucking handle, did that -- did you file a patent application on that?
A. Yes, I did.

Q. And did that become the '077 patent?
A. Yes.
Q. Now, at the time --
MR. HARDIN: Do we have PX4, the '007 patent, and in particular Figure 12?
There we go.
Q. (By Mr. Hardin) So this is a picture from the patent -- the '077 patent?
A. Yes.
Q. We colored in some places in yellow in this engineering drawing.
Can you explain to the jury what they're seeing?
A. Yes. Those are the vents that are at the back of the plunger handle that are venting the inside of the plunger handle. And we moved them off to the sides so that if there was any liquid up in the handle, it couldn't come up and get on the thumb of the person using it.
But we were putting that vent in so that that spray wouldn't come out the front.
Q. Now, you did that. And did you contact your lawyers in the normal course and file for a patent application?
A. Yes, sir.

Q. And in connection with those proceedings, did you find out that there were inventors prior to you that had filed patented -- for patented designs of retractable syringes that had a hole in the plunger handle?

A. Yes, sir. I was sent a Murray patent, and it had a vent in the back prior to -- prior to what I had come up with.

MR. HARDIN: And can we see PX37, please? Oh, well -- oh, that's fine. Okay.

Q. (By Mr. Hardin) So this is a copy of the Murray patent that was before your patent, correct?

A. Yes.

Q. And it has some holes in the plunger handle, correct?

A. Yes, sir.

Q. Okay. What did you understand the Murray patent purpose for those holes was?

A. Well, you could have seen it before he cut off the picture, if he puts back on the full size.

When that needle-holder releases, this has -- it's a different design. But when it releases, there's a piston inside that handle that that spring pulls up. And because that piston is against the wall, it causes compression and -- and after that air begins to compress, it won't let it fully retract.

So they had to put that vent in there to let that air out in order to let that piston move the full stroke up there to get a full retraction. So they were using that vent in order to facilitate the mechanical part of their device for retraction.

And what I was doing is my syringe, and you can try this -- you can plug up those vents. It will still retract just fine. What I was trying to disclose to the public was that I had discovered venting has another function, and that is you can use vents to stop splatter from coming out the front, which is totally separate from releasing -- from being there in order to make the product mechanically work.

Q. Okay. And you said that in your patent, didn't you, though? In the '077 patent?

A. Yes, sir.

MR. HARDIN: Okay. Can we go back? We skipped a slide. Can I go back one to that statement in the patent?

Q. (By Mr. Hardin) Okay. The back of the plunger -- this is from your '077 patent, correct?

A. Correct.

Q. Says the back of the plunger is vented, so the entry of retractable parts, which upon retraction, finished dislodging the stopper and carrying it back up into the cavity, do not generate an internal pressure that can blow out the nose of the syringe carrying any residual fluid with it.

That was your idea?

A. Yes.

Q. As far as you know -- as far as you know, were you the first to discover that idea?

A. I -- I have not seen that in any other patent.

Q. Okay. Now, the claims here at issue cover more than just vents. They cover a combination of vent and tucking. We've been referring to as tucking, correct?

A. Correct.

Q. And that tuck has to do with, again, a handle that has two positions; is that correct?

A. That's correct.

Q. And did you understand at some point in the process that other people had non-retractable syringes where the back tucked into a collar?

A. I don't know that they were ever on the market, but there was -- there was a patent out there that I had seen where on a standard syringe the handle could tuck all the way inside.

Q. Okay. So explain to the jury why you felt your use of a handle that would push down inside a collar was any different than anyone had used that before you?

A. On the -- on the -- on the other drawing that I saw, what happened was is that the handle was just shorter than the -- than the barrel. So that when you pushed it in, the whole handle fit within the barrel. The handle was made and manufactured just shorter than -- than -- well, I can't -- if this is your barrel and you made a handle that was only this long (indicates), then it would just push all the way in. And that handle never really changed from that first position. And what I had done is if you look on -- I didn't really invent a handle that tucks. I invented a handle that doesn't tuck, and then it does tuck. It did two things.

The first time through -- if I can get one of these out of here.

Okay. The first time through, the handle is all the way forward, okay? And it's still sticking out where you can grab it. And they can go back and forth and draw medicine and do everything they need to do. And that's the first position.

But after the injection is completely done, then you push it in, and it moves to a second position, and now it's not graspable, because it's tucked inside.

So it wasn't just a tucking handle. It was a non-tucking, and then it became a tucking handle. It had one function during the injection and another function after the retraction. So it was really a different mechanical solution.

Q. Now, when it's in that second position, is that plunger handle totally inaccessible?

A. No. You can -- you can pry it out, or as you saw me the other day on that film clip, I have a long thumbnail and I can -- and I've done thousands of them. I can go in here and I can -- great. The one time I go to do it.

Well, you know I can do it. You saw me do it. Okay. There. I did it. Okay. I can do that. But I have -- like this nail is about a quarter inch longer than that one. But you can do it with a tool. It's not inaccessible.

But we've sold over 680 million of these, and we have not had, to my knowledge, a single complaint of what I was watching happen at that hospital where people were just fidgeting with them and accidentally dropping that needle or bringing it out to exposure.

So I say that it solved the problem, and more -- equally importantly, it eliminated the need for that lock that made it so that you couldn't -- so that it would be usable by everybody.

Q. Okay. Was that -- of that -- we've told several invention vignettes, and the last one had to do with the combination of this event with this two-position handle, and that became the '077 patent, correct?

A. Yes, sir.

Q. Okay. Now, that -- so, essentially, all that invention work was done sometime in 1997 -- by 1997?

A. Yes. We -- we had all of that in our products in early 1997.

Q. Okay. Now, I want to visit with you just a moment, because it was been mentioned several times in this litigation about your early interaction just after these inventions that you've described, with a company called Saf-T-Med.

Did you ever see a sample of the Saf-T-Med product?

A. Yes, sir.

Q. How did you receive it?

A. I -- I saw two samples of them, and I looked at it briefly and realized that the product would never work.

Q. Now, how could you look at a product and quickly tell that the product would never work?

A. Well, the product that I looked at -- and I'm not sure it's the same one that was provided in the deposition, but the product that I looked at had a rubber seal mounted on a head with these little collapsible stanchions that had to be molded.

And they were real fine in diameter, and I guess the design was, is that those stanchions are supposed to hold against that 18-pound fluid pressure on the way in. And then when you get in, those stanchions are supposed to break with that 9-pound force.

And the reality of it is, if you make the stanchions too weak, you never finish the injection. And if you make the stanchion too strong, the thing will never fire.

And so I knew from looking at that, you know, you had a mechanical barrier and a hydraulic barrier to try and make a retractable syringe. And I knew whoever was doing that syringe had -- had hit the wall at least for now. As long as those stanchions were in there, that product would never be able to be functional.

Q. By the time you saw that product, had you already finished all the inventive activity that we just discussed?

A. Yes, sir.

Q. Okay. How did the prototype of the Saf-T-Med invention come to your attention?

A. Well, Dr. Shiu was on our Board of Directors, and he also was at Presbyterian Hospital and connected us with that hospital. And we had been told we were going to get a contract in January of '97, when we went over to that hospital.

Well, this was March, and we didn't have a contract. And I believe around March 25th, Dr. Shiu brought me a letter that had been sent to the President of Presbyterian Hospital, indicating that we would not get that contract. And the reason stated in it was that we were to have a bake-off competition with Saf-T-Med prior to getting the contract.

Q. Okay. And so that concerned you, because you had built a plant and had a company and were ready to go to market. And now you had a competition that you didn't realize; is that correct?

A. Well, yeah, that's part of it. But there was something else that was of a concern.

In that letter, it indicated Saf-T-Med was -- was going to be selling for 12 cents. There was a chart in the letter, and it said the Safety -- it had our product listed at 80 cents; and then it had Saf-T-Med at 12 cents. And it said that Saf-T-Med -- I mean -- yeah, Saf-T-Med was made at -- out of standard pieces, standard components.

And so I had an obligation to be concerned, because I had raised money, we were building a plant, we were going to production. I had represented we had the first retractable syringe, and now I'm looking at a letter that Presbyterian Hospital is getting ready to buy syringes at way less cost than us.

And so I'm sitting here going, well, I guess we're done; it's over.

Q. What was the first thing you did to investigate whether there was such a product?

A. Well, the first thing I did is I checked with our staff to check with the FDA. They have a register list to find out who has permission to market.

Q. Okay. And did they have anybody there?

A. Saf-T-Med did not have permission to market with the FDA.

Q. Okay. And what did you then do next?

A. Well, the next thing I recall doing is I knew that they didn't have permission to market, so on that letter in another place they had the President of the company. And since it had some information on my product about dead space in the chart, I called this Mr. Erbs, and I wanted to find out what was -- why the product's being marketed and why it has a chart comparing my product to other products.

Q. And what did you learn from that telephone conversation?

A. Well, what I learned from that telephone conversation is he had --

MR. BECK: Your Honor, I'm going to object. That's hearsay.

THE COURT: Sustained.

Q. (By Mr. Hardin) Did you figure out Mr. Erbs might have -- did you think Mr. Erbs could have gotten your product just off the open market to test?

A. I know that he could not have.

Q. Okay. How do you know that?

A. Well, we weren't giving them out at that time.

Q. Okay. And what did you do after your conversation with Mr. Erbs?

A. Well, I received some material from Mr. Erbs, a chart showing dead space calculations that had been done on our product. So clearly -- clearly, somebody had a sample, because there was a comparative test.

But interestingly enough, my product was being compared to other people's but not to Jim Erbs'.

Q. So your understanding was this product was for sale at 12 cents.

And what did you do next? Were you curious to get a copy of the product?
A. Well, now I'm -- at this stage, I'm confused, because it's for sale at 12 cents, but the FDA doesn't have any knowledge or they're not publishing any information about it. And there's a comparison to my product to other products, but there's still no evidence that there's really a product.
So I told Lillian, who worked for our company, to go over to Dr. Shiu's office and pick up a sample of whatever it was they were marketing to Presbyterian Hospital.
Q. Okay. And did she do that?
A. Yes, she did. She brought me two samples.
Q. Okay. And with the sample, did some information come back with the sample?
A. Yes. Information came back, written information that had additional statements about the retractable product that were not correct.
Q. About your product?
A. Yes.
Q. So you were afraid your product was being --
MR. BECK: Judge, I'm going to object to the leading nature of the question.
Q. (By Mr. Hardin) What did you do after you

received this information?

A. Well, okay. Now I've got information -- let me -- so you understand where I'm at. I'm trying to get this contract where I've got these doctors, where we've done this clinical. And I have been told the only way I'm going to get this contract, in that letter from -- that the President of the hospital got from this purchasing group about Saf-T-Med is I'm going to have to compete in a bake-off contest at a Becton Dickinson evaluation site, and the winner will get the contract.

And my problem is, I'm ready to sell now, and this other product doesn't even exist yet.

And so what I -- and then there's false information. So what I did is I sent what I had to my lawyer and asked -- and related the events of what was going on.

Q. Now, did you know at the time how Ms. Salerno had obtained those samples and that information?

A. Initially, I did not.

Q. Okay. And what did you find out later about that?

A. Well, my understanding of this, and I wasn't -- is -- is that my lawyer sent a letter to Jim Erbs to suggest that he quit making false statements or whatever.

And then he received a letter back, and in that letter, there was an indication that Lillian had misrepresented who she was, so that the samples would be sent to Shiu's office so that I could obtain them.

Q. Okay. And did you have any idea that she was doing that?

A. No, not prior to being told that that is what happened.

Q. Okay. And what happened next? Did you -- what did you do after you found that out and the lawyers had already written a letter? Did you take any further action with respect to the situation?

A. Well, I wasn't happy with Lillian. We don't do things that way. And I told her don't ever do that again; it's not okay to do.

And then in addition to that, why -- through communication with the law firm, it was suggested that it might be a good idea, since this other company didn't really have a product yet, to try to sort of chill this thing out and have me write a letter, CEO to CEO.

And so I wrote a letter to Mr. Erbs, and in that letter, I think I indicated that you got your product in a way that -- I got your product in a way that wasn't right; you got our product in a way that wasn't right, whatever. There's plenty of work for everybody and kind of you go your way, and I'll go my way, and just try to keep the thing from moving toward litigation, because the chances of getting a contract when you're in litigation over something like that, I mean, already the contract was pretty much gone.

Q. Okay.

MR. HARDIN: Let's look at PX79, please.

Q. (By Mr. Hardin) Is this that letter that you wrote Mr. Erbs?

A. Yes, sir.

Q. Okay. And as a result of sending to Mr. Erbs this letter, did the situation, as far as you were concerned, wind down?

A. Yes, it did. It -- it -- it didn't come up again until this -- the litigation that we're in.

Q. Okay. And what did you tell Presbyterian Hospital about this potential bake-off? Did you -- did you write them anything about that?

A. Yes. I wrote a letter to the -- my recollection is I wrote a letter to the President of -- Doug Hawthorne of Presbyterian Hospital, indicating to him that it didn't seem appropriate that I'd have to have a contest at Becton Dickinson, my competitor, at a site for a product that didn't exist yet.

Q. Okay.

MR. HARDIN: Can I see PX78, please?
Oops, that's not the right one. 78.
Well, it looks like we have trouble finding Exhibit 78.
Q. (By Mr. Hardin) You wrote a letter to the President of Presbyterian Hospital and suggested that you just move forward?
A. I -- I -- you know, I don't have the letter in front of me, but my memory is I wrote him a letter that says how can we compete with a product that's years, if ever, from existing.
And what I was hoping to do was get them to relent and go, hey, we'll give you the contract. Seemed to me they ought to at least give me the contract until the other product showed up. I mean --
Q. Okay. Let's move past that and go to the -- the -- going into the marketplace.
This is late -- this is by now 1997. That whole thing happened around March -- March, April, May of '97, correct? That little vignette about Saf-T-Med?
A. Yeah, I think March 25th through the following month.
Q. Okay. All right. Now after that, you had a product and you wanted to get into the marketplace.
What did you do?

A. Well, we weren't having much luck getting -- getting our product into hospitals, and so we thought, well, we'll go out and we'll find some other people that have the same interest that we do in terms of trying to protect clinicians.

Q. And what -- what groups responded most favorably?

A. Well, I went -- after discussion with our Board, there were insurance companies and clinical workers and also some union members and the clinical front-line workers and union members were the most responsive.

Q. Okay. And what were they doing and -- that you joined in with or attempted to assist that you thought would be useful in getting your technology into wider use?

A. Well, when I showed them -- there had been efforts -- we weren't the first. There had been efforts toward needlestick protection legislation, but the technology of some of the safety products was not safer than what they were already using; in some cases, it was more dangerous.

And so when I showed them that that needle could just disappear, they went, hey, you know, let's do legislation kind of thing, because the technology and the politics are now coming together to get this thing done.

Q. Okay.

A. And so --

Q. Did you give speeches and start to go out and try to get active in helping this legislation?

A. As you probably noticed I'm a little nervous for that.

I participated in a conference out in California at a bloodborne pathogen conference, and I have to tell you that Kathryn over here worked really hard with clinical people to promote that legislation.

Q. Now, did you make suggestions? Did you become part of the groups that were trying to push this legislation through?

A. Yes. What -- what I -- what I could do from my side, and I wasn't alone, we had people -- we drafted some what we thought would be sensible to -- for the legislation.

And in California, they have CAL-OSHA instead of just like federal OSHA. And so we provided them with a kind of a foundation of what we thought that legislation might -- might want to look like, our suggestions to it.

Q. And did that eventually get passed in

California?

A. It passed in California and I believe 17 other states. And eventually, it became signed into federal law by President Clinton, which resulted in me having my picture and my pen.

Q. Okay. Now, along about the same time, now we're about 2000/2001.

Did you get to meet any other personalities, besides President Clinton, in trying to get your product noticed in the marketplace?

A. Personalities? 60 Minutes did a story with 12 -- you know how they do three stories on Sunday night or whenever. And they did a story, and I met Mike Wallace.

Q. Okay. So you were -- your product was highlighted on --

MR. BECK: Judge, may we approach the bench, please?

THE COURT: Very well.

Jury, if you'd like a little stand-in-place break, you're welcome to take one.

(Bench conference.)

MR. BECK: Judge, I --

THE COURT: I don't recall anything about 60 Minutes, but --

MR. HARDIN: We're not going to show the 60 Minutes. That's been excluded, but just mentioning it he got that notification -- that got the --

MR. BECK: He's already mentioned that.

THE COURT: I don't recall -- was that subject to --

MR. HARDIN: It was not.

THE COURT: I don't recall the 60 --

MR. BECK: I'll go back and double-check, but --

MR. HARDIN: No. In fairness, we attempted to get -- we tried to get -- Your Honor, we tried to get an edited version of 60 Minutes that took out the --

THE COURT: This went into all of that. I think that's all we need to mention.

MR. HARDIN: I'm just saying --

THE COURT: It's subject to the motion in limine. I don't remember. I'm not saying absolutely it's not, but --

MR. HARDIN: That's really the only question, asking that it happened.

THE COURT: We sure don't need to go on into it. You want to look for a closer --

MR. BECK: No.

THE COURT: David or John, do y'all remember if --

LAW CLERK: No.

THE COURT: I don't recall.

MR. HARDIN: All it is, David, is just that.

THE COURT: Okay. I think there -- to be safe, just leave it alone.

Okay. Thank you.

(Bench conference concluded.)

Q. (By Mr. Hardin) Now, we are in a timeframe of 2000, after all these things have happened.

And about that period of time, were you -- did you ask for an independent company called BVS to do some work for you?

A. Yes. We were taking our company public to try to raise money in 2000, and so we hired BVS to do a val -- they did valuations of companies to determine how much the company would be worth as a part of that process.

Q. What was their charge? Their charge was to value the company?

A. Well, they were supposed to come in -- I mean, we have accountants and everything, but our value of ourself is not the way it works. You have somebody else come in, and you let them go through your books, your history.

They took into account that legislation, because now we had in 2000 this national legislation, the equipment we had, our projections, and based on all that, they came back and said, we believe your company is worth $337 million.

Q. Okay. Now, after you got -- did BVS make projections regarding RTI's future sales of VanishPoint when they determined that value?

A. Yes, they did. And they based them on what we had done historically and what they foresaw going forward based on our marketing strategies.

Q. And at the time you received them as CEO of your company, did you believe those projections were reasonable and realistic based on what you knew about both the state and federal legislation that was just being enacted and the state of the market awareness of the safety issue and what these products could do?

A. I -- I believe that they were conservative, but I certainly thought that that was the way to go, is to be conservative, and I thought they were perfectly okay for us to go out and represent.

Because I have a master's in accounting. Looked like to me like they had done a good job.

Q. So you thought -- by conservative, you thought it was on the low side of what you were actually -- what you thought the evaluation should be?

A. Yes. I thought it was much higher, but it's my company. But from accounting, certainly, it would be okay to say it was that. You know, if it got higher, then somebody might question it, but I didn't think anybody would question it would be lower than that.

Q. Now, at the time that those projections were received, did you believe that the projections in the BVS report were reasonable and could have been made as of December of 2000?

A. Well, I did, but it wasn't just my decision. Our whole -- I have a Board of Directors. I -- you know, we've been sitting here all day, and I'm a patent holder and all that, but actually, RTI has exclusive rights to the patent.

I have a Board of Directors I answer to, and it's the Board of Directors that made the determination, and I concurred with it, that this was a perfectly good conservative appraisal of our business at that time.

Q. Okay. Now, we're talking about values here, and I want to take you back to something I asked you earlier.

Early in the formation of the company, is it true that you and RTI entered into a license agreement for the Shaw patents about June of 1995?

A. Yes.

Q. Okay. And prior to entering into that license agreement, had you done any research on what royalties might be paid for medical devices?

A. I was provided information by my attorney's research that I could look up to determine what a reasonable royalty rate would be.

Q. And what -- what facts did the industry research reveal?

A. The industry research --

MR. BECK: Your Honor, may we approach the bench, please?

THE COURT: Yes.

(Bench conference.)

MR. BECK: Your Honor, I'm going to object to any testimony on reasonable royalty. They dropped that. All they're arguing in their damages is lump sum now. Why is this relevant to anything?

MR. HARDIN: Well, we're setting the stage for all the economics that would have been available to -- the information that would have been available at the table in 2000, Your Honor.

I just asked him about a royalty rate

that was entered into in 1995. We're going to say that they sat down at the table at the time of this -- what did you tell me we dropped?

MR. BECK: The reasonable royalty. I mean, the damages --

MR. HARDIN: Well, no, no, no. I'm sorry. I'm sorry. That's not correct.

THE COURT: What is your damage --

MR. HARDIN: Our damage -- our damage model, Your Honor, is that there would have been a lump sum reasonable royalty payment in the year 2000. That's our damage model.

THE COURT: And you're saying this is a factor that --

MR. HARDIN: Yes, Your Honor. Your Honor excluded one damage model, but that damage model is in.

MR. BECK: Your Honor, reasonable royalty is not relevant to any of the Georgia-Pacific factors. And they're arguing lump sum. And I understand from their damage model, which they've now shrunk down to a lump sum payment, that is not a relevant factor in the Georgia-Pacific list of factors.

MR. HARDIN: The Georgia-Pacific factors are -- there's ten of them, and one of them is what people pay in determining a reasonable royalty that you end up getting.

And what I'm -- what I -- the reasonable royalty negotiation he had was with his company in 1995. We're going to say we have to go back to 2000 and look at what would have happened if he would have sat down with Becton Dickinson in 2000.

So I think it's right in the middle of what is relevant.

MR. BECK: Judge, he negotiated with himself.

THE COURT: Well --

MR. HARDIN: That's cross-examination.

THE COURT: I think that's wonderful grounds for cross-examination. I think there are a lot of factors that come into play on these Georgia-Pacific -- I'm going to allow him. That's perfect cross-examination.

MR. BECK: Thank you, Judge.

(Bench conference concluded.)

THE COURT: You may continue.

Q. (By Mr. Hardin) Okay. What did the facts from the industry research reveal to you about royalty rates back in 1995?

MR. BECK: Your Honor, just for the record, I'd like to object as hearsay. He's now talking about documents that are not in evidence.

THE COURT: Overruled. I'll allow this with this purpose.

A. When I looked at the industry, the rates ranged anywhere from 5 to 30 percent.

And it -- and you had asked me what were the factors, and my memory of it was, it was how important the technology was to society, was it a minor improvement or major breakthrough, and what industry was it in.

And if it was important in the industry and it was a major breakthrough, we would have the higher rate. And if it was an insignificant addition or something, then it would have a lower rate.

Q. (By Mr. Hardin) Now, you chose the -- the actual license agreement between you and the company at the time was 5 percent, correct?

A. I chose the 5 percent rate.

Q. Why did you do that?

A. Well, one day I'm Thomas Shaw, Checkmate Engineering, and the next day I'm Thomas Shaw Retractable CEO, and I want the company to have the best chance to succeed.

But I'm basically -- when I start out, I'm the only shareholder until I got other shareholders, and I wanted the company to have the lowest rate. And then as it went forward, my original objective was to arrive at safety.

And so I wanted to have the low rate so that the company could thrive and do volume so that people would get safety. That had been the objective from before I even had a syringe.

Q. Now, did the effective -- the stated rate was 5 percent. Was the effective rate -- end up being higher than that?

A. Yes. At the time I made the license, I thought 5 percent of gross. Well, when we got out there and years later -- because by the time we got to the market, I find out in the industry, there's rebates and payments that go back and forth through distributors, and so the effective rate, instead of being 5 percent of gross ends up being 7 percent in net after our company pays back the rebates. And it just turned out that way.

Q. Okay. Now, after that license agreement, have you ever entered into another license agreement with any other entity for your technology?

A. Yes, we have.

Q. What -- what company was that?

A. There's a company in China that wants to sell syringes to people in China, and they negotiated a licensing agreement with us.

Q. Okay. Does that license agreement state a rate?

A. It doesn't state a rate, but I know what their sales price was, planned to be around 10 cents, and I know what our 2-1/2 per 1 cent -- per one size and 3-1/2 for another, and the average of that is at 27 percent royalty rate, if you take the midpoint of what they're planning to do. And so they're paying the higher rate because they're not us.

Q. Okay. Now, in the year 2000 -- if we take the year 2000 as the -- that's when you got this information about the valuation of the company. If we take the year 2000, was the VanishPoint the only automated retractable syringe safety product that was actually being sold to hospitals and clinics in the United States?

A. That's my belief.

Q. Now, later were there any other companies that made offerings of retractable syringes?

A. Yes. I recall two other companies. There was NNT, I think, out of England, if I recall, or Ireland, somewhere over there. And then there was an SMI.

Q. Okay. Now, if RTI had come to -- if BD had come to RTI in the year 2000, would you, at that time, with all this information, been eager to give BD a

license to your technology?
A. No, sir.
Q. Why not?
A. Well, by 2000, our product is fully developed and ready to go, and now we've got mandatory legislation out there, and we're kind of a one-trick horse. We've got one product.
And so if we licensed a major competitor and they have substitute products, there's no guarantee that they're going to push our products and pay us a royalty instead of pushing the products that compete up against us.
Q. What -- what would -- if you had handed a -- if you had agreed to give BD a license in 2000, what -- how would that have impacted that 337-million-dollar value that was placed on your company back then?
A. Well, I think it would have dropped dramatically immediately.
Q. Because they would have been able to use your own product in competition?
A. Well, when you're new in the industry, to go out and get a customer, you have to have something that they're not getting from their existing supplier.
And -- and Becton Dickinson, to their credit, is a major supplier, so how -- why would these companies

talk to us if they can get our technology from the other company?

So I thought it would make it very difficult for us to get customers, and in the meantime, there was no guarantee they were going to push our -- our technology.

Q. If RTI was at the table with BD in 2000 and had to give them a license, how would RTI have wanted to be paid?

A. Well, the only way we could have been sure of that would have been to ask of them upfront money to guarantee that they're going to move the product.

And that goes back to the other issue. When we started this thing, it wasn't about money. Once I had shareholders, we needed money, but it was about stopping needlesticks.

The only way to guarantee that they're going to move the technology is to have them go ahead and pay in advance so they have to sell the technology in order to make up what they paid for it.

So I would have asked for a lump sum.

Q. Now, would you have insisted on the entire value of all your technology being provided on a one-lump-sum basis?

A. No. What I believe would have been reasonable then would have been to get like 10 years of payment upfront, and then if they did the right thing and it had an upside, you would get a royalty after that. If they hadn't done anything, why then you go do it yourself or give it to somebody else.

Q. Now, we talked about what your -- and then what would have happened? You would have -- at the end of 10 years, you would have done what?

A. Well, you would look at it.

Q. Okay.

A. Are they moving product all over the world, are we getting royalties, or are they selling their products instead?

And if everything was going well, then you'd go, well, great, we'll extend the license, and we'll go to a royalty.

Q. Okay. Now, was that a vastly different situation in the year 2000 -- were you in a vastly different situation than you had been in the '91, '92, '3, '4 time period, as far as the valuation of your company and possible licensing?

A. Oh, absolutely.

Q. And in those early days when -- before you had shareholders and had formed a company, did you have any agent that was out there seeking to try to find a way to get your product into the market fast?

A. There were, I believe, at least two people that I recall that what they were doing is, they were excited about the technology, thought they knew somebody, and they were trying to put together a deal much like a realtor might do.

Q. Like a real estate agent would try to sell my house?

A. Yeah. They were -- you know, like a commission. If they could come up with a way to get a major manufacturer to go with our technology, they would get like a 5 percent fee.

Q. Okay. Did -- did any of those folks have actual authority from you to make a deal without talking to you?

A. No.

Q. Okay. I want to talk a minute about these projections from BVS and -- that you received in 2000 and the issue of, if that had come true, whether you could have made enough product to meet those projections.

You had -- you had a company saying, gee, we think your sales are going to go like this. You've got a plant operating. In order to make the quantity of syringes for that BVS evaluation, would Retractable have

had sufficient equipment and space in Little Elm?
A. Certainly. We had 35 acres, and we had just -- we had a building in one corner of it, and we had the machinery worked out, and we had machinery for the 3's and the 1's, the most popular sizes. And we had the resources. We had the technology.
I believe today and I believe then we were the world leader. There was no reason we couldn't make those pro -- projections.
Q. What about -- would you have had to hire more sales staff? Wouldn't you need more sales staff if you were going to serve the market at those higher levels?
A. No. Because if we could have gotten into the -- where you start getting the big hospitals, like Presbyterian, where I wanted that contract, you get in there, you get that one customer, you have one sales rep, and they buy tremendous volume.
So you don't need more sales staff; you just need customers that are bigger-volume purchasers than some little clinic that we might be selling to now.
Q. Okay. Now -- so you don't think you would need a lot more salespeople.
What about the machinery or the equipment?
A. Well, because of the -- all of the iterations that we had been through, with the design, with the

'733, and the improvements, we had gotten this product down to where you can -- our machines were making them at 2 per second.

So that's 48 million, approximately, syringes a year out of one machine.

And so if you take a 3- to 5-million-dollar machine and you amortize that over 10 years, you're talking a fraction of a penny to make the syringe for assembly.

So then you've got a quarter of a cent for the spring. The product weighs about 1-1/2 times more than a standard syringe that's made at 3-1/2 cents. It's got the same packaging, same sterilization, same needle.

So instead of 3-1/2 cents to make our syringe, you're looking at 5 cents total cost, packaged, done, and ready to roll out for our product in high volume.

If you only make one and you spend 15 million, one syringe costs you 15 million; the second one 7-1/2 million. As your volume goes up, your cost comes down, and eventually, you get down to the price of material. And at that, we're about 5 cents. And they make 30 billion syringes a year, and we had worked out the details to make these at such a high speed that we were there.

Q. Okay. Let me ask you just a few more

questions that really are the reason we're here.

We've had a detailed infringement analysis. I'm not -- we're not going to go into that with you, but you know what the Integra product looks like, correct?

A. Yes, sir.

Q. And when you see that product, do you see features in that product that you believe were copied from your technology?

A. There's no question in my mind.

Q. Okay. And in particular, what features do you find -- what's the first feature that you feel was copied into that BD product from your technology?

A. Well, I -- I wasn't there, so I can't tell you the order of it, but I can tell you that it has a two-position handle with a tuck in the back, and they don't have a lock in it.

And all retractable syringes prior to ours had a lock, and that was a deal breaker. We took out the lock and substituted the two-position handle, and that two-position handle is in Becton Dickinson's product.

Q. Okay.

A. And along with that is a vent to prevent splatter.

Q. All right.

A. Those two things make it clinically safe.

Q. What about the retraction mechanism in the front?

A. On the retraction mechanism, what -- what we provided was a retaining member that was frictionally held on the inside wall of the barrel that could be slidably placed in there, and then it could be separated. We had a bridged separated version and a non-bridged version, and they took the bridged version. And then importantly, we had a fixed plunger seal so that when you're pushing that plunger down with enthusiasm -- and I hope it's not on me, but when somebody is giving a fast injection, that that plunger seal doesn't break off and come backwards before you finish the injection.

And that means that plunger seal has to be mounted firmly on a sturdy part of the plunger handle where it won't slide.

And so that is in the Integra products. They mounted that seal on the handle itself instead of making it a sliding seal.

And then we put a barrier in our product so that that needle doesn't go forward when you're trying to retract it and break it loose and drive it into the patient, which would be painful. And so there's that feature.

Q. Okay.

MR. HARDIN: If I can just have a moment, Your Honor?

(Pause in proceedings.)

MR. HARDIN: We pass the witness, Your Honor.

THE COURT: Cross-examination.

MR. BECK: May it please the Court.

CROSS-EXAMINATION

BY MR. BECK:

Q. Mr. Shaw, I want to do this in several different parts. And, hopefully, we can move along pretty quickly.

But so that the jury might know, when was the first time that the VanishPoint ever hit the market? Tell the jury when that was, please.

A. I believe somewhere right close to either the end of 1996 or the beginning of 1997.

Q. All right. Now, I want to begin with what I'm going to call some general principles to see if we're together and when we're not together so I can pursue it a little bit further.

The first question I want to ask you is whether or not it is okay to look at a competitor's product, if it's out there in the marketplace?

A. I -- yes.
Q. As a matter of fact, in 1988 and 1989, when you first saw this television show, you went out and bought some syringes, did you not?
A. Yes, sir.
Q. Were any of those Becton Dickinson syringes?
A. They were Becton Dickinson.
Q. Did you look at them?
A. Yes, sir.
Q. Did you take them apart?
A. Yes, sir.
Q. Did you try to figure out how they worked?
A. Yes, sir.
Q. Did that try -- did that give you some general information and knowledge about syringes and how they worked at that time?
A. At that time -- I was asthmatic. I had given myself shots when I was a kid. I knew how syringes worked.
Q. All right. So you already knew it, correct?
A. Yes, sir.
Q. But you, obviously, wanted to learn more, because you asked your pharmacist for some additional syringes.
A. Yes, sir.

Q. And there's nothing wrong with that, is there?
A. No, sir.
Q. And it is also okay, when you legitimately get a copy of a competitor's product, to compare that perhaps with something that you're thinking about designing, correct?
A. Yes, sir.
Q. Nothing wrong with that either, is there?
A. Offhand, I can't think of anything.
Q. You have done it, have you not?
A. Done what?
Q. You have compared your product to Becton Dickinson's products.
A. Yes, sir.
Q. And you know that Becton Dickinson has looked at your products and compared their product with the VanishPoint, do you not? You've seen documents to that effect.
A. Yes, sir, I saw that.
Q. Nothing wrong with that, is there?
A. Maybe.
Q. Well, it's okay for you to do it; is that correct?
A. Well, if you're doing it to see how performance works, that's a little different than seeing

if you can take things off of it.

Q. Absolutely. Absolutely. And I'll grant you that.

But it's okay, as a general proposition, for two companies that are or are not competitors to look at their products and just see how they compare to one another, correct?

A. Yes, sir.

Q. And by doing that -- and again, I'm not talking about infringement here; I'm just talking about generally.

By doing that, if one company or the other can improve the product, then we all benefit; isn't that right?

A. Improve which product? Improve their own product --

Q. Either one.

A. -- or improve the other product?

Q. Either one.

A. Well --

Q. For example, you can take your product, you can look at somebody else's product, and assuming it's not protected by some patent, you can actually compare it. And if it's not protected by a patent, you can actually use part of it, can you not?

A. Well, but that's not what we're talking -- we're not talking about here, what happened here, right?

Q. I'm talking about general principles at this point. We're going to get to the specifics in a few more minutes.

A. Okay.

Q. So go back to my original question. It is okay for two companies to look at each other's products, and one can look at that -- the first company can look at the second company's product, and assuming that there's not some patent protection that prevents them from doing it, they can actually improve their own product by looking at the other product; is that not correct?

A. Yes.

Q. It is okay, is it not, sir, for a company to copy -- and I'm going to use the word that your lawyers have been using in this lawsuit.

It is okay for a company to copy something if they own it; is that not correct?

A. To copy something they own?

Q. Yes, sir.

A. You mean produce what they own?

Q. Produce. I'll use your word. It is okay to produce something you own.

A. Well, certainly.

Q. You can make some changes in it, can you not, if you own it?

A. If you own the right to the changes.

Q. All right. And it is also okay, is it not, for you to make some changes in a product if you go out and acquire that product; is that not correct?

A. If you've acquired it, you own it, right?

Q. All right. And so, again, just to be clear, if you own it, you can re-engineer it, you can make changes, as long as what you're doing does not in some way infringe upon somebody's patent protection; is that not correct?

A. Sounds reasonable.

Q. All right. Now, I want to ask you whether or not -- well, let me -- let me go to this next subject, if I may.

In terms of general principles, I want to ask you whether or not -- well, let's talk about the McGary patent. There's been a lot of testimony in this case about the McGary patent.

Did you ever meet Mr. McGary?

A. No, sir.

Q. Did you ever meet Mr. Jentzen?

A. No, sir.

Q. You have had communications with Mr. Erbs, have you not?

A. Yes, sir.

Q. And let me just ask you, you didn't invent the claims in the McGary patent, did you?

A. No, sir.

Q. You did not invent the cutting retraction mechanism, did you?

A. No, sir.

Q. Nowhere in your patents do you disclose the use of a cutter to trigger retraction, do you?

A. Do I use the word cutter? Is that what you're asking me?

Q. My question is very simple, sir. Nowhere in your patents do you disclose the use of a cutter to trigger retraction.

A. Well, I would disagree with that. I have a mechanism where it suggests that it could be separated, and certainly, that would include cutting.

Q. No, sir. I'm not talking about suggesting. My question is: Is there anywhere in your patents that you disclose the use of a cutter to trigger retraction?

A. Where I say the word cutter? No, sir.

Q. All right. None of your -- as a matter of fact, none of the McGary patents incorporate your frictional methodology, do they?

A. No, sir.

Q. Your patents don't say anything --

A. Well, wait. Excuse me one second. You said none of the McGary patents, and I don't know what we're supposed to do here today. There were some other patents further down where his technology started looking like mine.

Q. Well, that's a fair -- that's a fair point, and let me clarify here. I'm talking --

MR. HARDIN: Excuse me, Your Honor.

MR. BECK: I'm talking about the McGary patents that are involved in this case that we've been -- the jury has been hearing about for the last two days.

MR. HARDIN: We request Limiting Instruction No. 1, Your Honor.

THE COURT: Very well. I think I've already read that one time today; is that not correct?

MR. BECK: You did, Your Honor.

MR. HARDIN: You have, Your Honor.

THE COURT: Very well. Then I will simply re-advise you that you will hear testimony about prior art patents, such as the McGary patent, and about a prior art device owned by a company called Saf-T-Med.

You should not consider this evidence in determining alleged infringement, but the Court admits such evidence for the limited purpose of showing alleged invalidity and rebutting Plaintiff's allegation that any alleged infringement is willful.

Now you may continue.

Q. (By Mr. Beck) None of the McGary patents --

MR. BECK: May I proceed, Your Honor? I'm sorry.

THE COURT: Yes.

Q. (By Mr. Beck) None of the McGary patents that the jury has heard about yesterday and today incorporate your frictional methodology, do they?

A. Correct.

Q. Your patents don't say anything about a cutter that cuts through or penetrates the seal on a plunger, do they?

A. The word cutter does not appear in my patents.

Q. As a matter of fact, so that the jury might know, your --

MR. HARDIN: Your Honor, there's actually another instruction. I'd like to have Limiting Instruction No. 4 read, talking about the description that Mr. Shaw put in his patents.

THE COURT: Very well.

There's another requested limiting instruction, and it's been styled or numbered No. 4.

We'll provide you a copy of each of those.

You will hear evidence concerning statements in the written description section of the asserted patents. You should not consider this evidence in determining infringement -- infringement.

You may consider this evidence for the limited purpose of determining whether or not any alleged infringement is willful, in determining whether any of the asserted claims is invalid based on an alleged failure to satisfy the written description requirement.

MR. BECK: May I proceed, Your Honor?

THE COURT: Yes.

Q. (By Mr. Beck) Mr. Shaw, during the course of your deposition, so that the jury might know, you were actually shown a 3mL Integra, were you not?

A. Yes, sir.

Q. And you were specifically asked to look at that Integra, and then you were asked a lot of questions about it, were you not, sir?

A. I'd feel a little more comfortable if I had the deposition in front of me.

Q. Well, let me just ask you this, and if you'd like to see it, then I'll show it to you.

A. Okay.

Q. Do you remember being asked, after being shown the Integra 3mL, to look at it and ask -- and answer the question whether or not the needle is released for retraction by the use of a cutter? Do you remember being asked that?

A. I don't specifically remember that.

Q. That is a true statement, though, is it not?

A. That the needle is released by the use of a cutter in conjunction with breaking a retaining member in order to release it.

Q. Yes, sir. That is true, is it not, in the 3mL Integra?

A. Yes, with that -- I mean, it is being held by something.

Q. No, sir. I didn't ask you that. I asked you whether or not the needle is released for retraction by use of a cutter.

A. Maybe I'm not the right one. I'm too mechanical. It has to be released from something.

Q. Let me refresh your recollection. And again, so that the jury might know, you remember when your deposition was taken, correct?

A. I've had many depositions.
Q. I understand that, but you remember your deposition was taken on January 12, 2009?
A. Okay.
MR. BECK: And, counsel, this is Page 88, Lines 6 through 9.
Q. (By Mr. Beck) I want you to read along --
MR. BECK: Your Honor, may I lean over the witness?
THE COURT: Yes.
Q. (By Mr. Beck) And you see this is your deposition testimony taken on January 12, 2009.
Do you see that?
A. Yes, sir.
Q. And the question --
THE COURT: Is this now on the screen, Mr. Beck?
MR. BECK: My gosh, it is, Judge. Okay. Technology is getting way ahead of me.
THE COURT: I was fixing to say, that's why we have all this fancy equipment.
MR. BECK: All right. Let me see --
THE COURT: Do you have the screen in front of you, Mr. Shaw?
THE WITNESS: Yes, sir.

Q. (By Mr. Beck) See that, Mr. Shaw?
MR. BECK: I'm looking for 89, Line 6.
Is that -- no, that's not it.
Judge, technology has failed us. May I approach the witness?
Q. (By Mr. Beck) Mr. Shaw --
THE COURT: It's Page 89. I don't know if --
MR. BECK: There it is. There it is. Now it's back up. Okay.
THE COURT: Now everyone can see.
MR. BECK: All right.
Q. (By Mr. Beck) And you remember being asked: Mr. Shaw, in the Integra syringe in front of you, is it true that the needle is released for retraction by use of a cutter?
And your answer at the time in January of 2009 was, quote, yes, I believe it is; is that correct?
A. Yes, sir.
Q. Now, so -- again, so that the jury might know the procedure, after your deposition was taken, you had an opportunity to review your testimony and make any changes that you thought were necessary or appropriate that affected the accuracy of your answers, correct?
A. Yes, sir.

Q. You didn't make any change to that, did you?
A. No, sir.
Q. Also, with respect to the 1ml, you were asked about that in your deposition as well, were you not?
A. Well, it looks to me like both of your 3 and your 1 are called Integras, are they not?
Q. They are. That is correct.
A. So that doesn't specify.
Q. Pardon me?
A. That didn't specify.
Q. I understand that. But you had been shown the 3ml, and now I'm going to ask you about the 1ml, which is in another part of your deposition, okay?
A. Okay.
Q. All right. Now, is it not correct that one of the elements of the Integra 1mL syringe operation is that it uses a cutter to penetrate the hub and the stopper?
A. Yes, sir.
Q. All right. That's true, also, correct?
A. Yes.
Q. Now, let's talk a little bit about what you have told the Patent Office.
The jury has seen what you have said in your patents. There's been some references during your

testimony to what you told the Patent Office, correct?
A. Yes, sir.
Q. Now, as a matter of fact, just so we're clear, you did not invent the retractable syringe, did you?
A. Yes. I made the first one in the world.
Q. No, sir. I asked you, did you invent the retractable syringe?
A. Yes, sir.
Q. So it's your testimony that you invented the retractable syringe?
A. I'm not the first person to get a patent; I'm the first person to invent one that actually works.
Q. No, sir. That's not my question. My question -- you're talking about something that was commercial that worked, correct?
A. That's pretty important for the healthcare worker.
Q. It is important. It is important. But that's not my question.
A. Okay.
Q. My question to you is, you did not invent the retractable syringe, did you?
A. I won't agree with that, because not all patents work. I invented it, but I'm not the first one to try to invent it.

Q. I'm not going to argue with you about that point, but let's just go with the patent. You were not the first person to receive a patent on a retractable syringe.

A. Correct.

Q. There were at least over 50 people, inventors, creative people who received patents for retractable syringes from the United States Patent Office; is that not correct?

A. Yes, sir.

Q. And they had all -- a lot of different ideas about retractable syringes, did they not?

A. Absolutely.

Q. Different designs than you did, correct?

A. Yes, sir.

Q. Different ways that retraction would work, correct?

A. Yes, sir.

Q. And whenever you filed your application for any of the patents in this case, one of the things you have to do and you have an obligation to do -- and one of your witnesses talked about a duty of candor -- you have a duty of candor to the Patent Office to tell them anything that you or your lawyer know about in what is called the prior art, right?

A. Yes, sir.
Q. And the prior art, so that the jury might know, is any patent that somebody got before you on a retractable syringe, for example, right?
A. Yes, sir.
Q. Could even be literature, could even be an article that somebody has written that described a particular idea or invention, correct?
A. That I don't know. I'm not a lawyer.
Q. Okay.
A. I couldn't answer that for you.
Q. That's fair enough.
Certainly, you would agree it involves patents.
A. Yes, sir.
Q. And in your application, you listed a lot of patents that people had received for inventions for retractable syringes, correct?
A. In conjunction with my attorneys. I couldn't possibly have written that patent by myself. I'll be honest with you.
Q. No. I -- I absolutely accept that, and I'm certain that that's true.
Let's look --
MR. BECK: Just put up on the screen very

briefly DX3.
Q. (By Mr. Beck) This is the so-called McGary patent, is it not, that we've been talking about in this case?
A. Boy, that's going to confuse people.
MR. BECK: Can we blow that up a little bit in yellow? Can you blow that up so the jury can see it?
Excuse me. What do we have here?
A. No. Now it's McGary.
MR. BECK: Put the McGary patent back up so we can see it.
Could you put that in yellow and blow it up so the jury can see it?
Q. (By Mr. Beck) This is the McGary patent, what we can call the '010 patent, correct?
A. Yes, sir.
Q. And the inventor there was Mr. Kern McGary and William Jentzen from Cedar Creek, Texas, correct?
A. Yes, sir.
Q. And this is a patent on a safety syringe with retractable needle, correct?
A. Yes, sir.
Q. Now, the McGary patent, obviously, was before any of three patents that you're asserting in this case,

correct?
A. Yes, sir.
Q. All right. And what it says here, according to the patent, an improved safety syringe with retractable needle is provided which allows retraction of the needle into a hollow plunger by additional forward pressure on the plunger after the fluid is driven from the syringe, correct?
A. Correct.
Q. No question that's before any of your three patents, correct?
A. Yes, sir.
MR. BECK: Let's look at DX5, please.
Q. (By Mr. Beck) And you've heard of this patent. This is the so-called Gillespie patent, correct?
MR. BECK: If we could blow this up, please. You've got the wrong one. The Gillespie patent.
All right. If you could blow this up so the jury can see it.
Q. (By Mr. Beck) This was a patent that was issued to Mr. Elgene Gillespie from Canton, Ohio. And the patent was filed in May of 1992 and was issued by the United States Patent Office in June of 1993, correct?

A. Yes, sir.
Q. No question that was before any of your three patents in this case, right?
A. That's what I'm reading.
Q. And the abstract says a syringe for giving medical injections, which has an internal mechanism for retracting the needle into the syringe after the injection has been given and locking the needle and plunger inside the barrel of the syringe to reduce the risk of accidental needle pricks, correct?
A. Yes, sir.
MR. BECK: Let's put up on the screen DX -- I believe it's the Botich patent. Can we put that up, please.
Q. (By Mr. Beck) All right. This is another patent issued to a Mr. Michael Botich from California and a man named Thor Halseth, correct?
A. Yes, sir.
Q. And this application was filed February 15th, 1991, right?
A. Yes, sir.
Q. Patent issued February 23, 1993, by the United States Patent Office, right?
A. Yes, sir.
Q. And the abstract here says a hypodermic

injection system with a retractable needle wherein the needle retracts within an interior cavity of a syringe plunger such that the needle is confinedly held within the plunger, correct?

A. Yes, sir.

Q. No question that was before any of your three patents; am I right?

A. I agree.

Q. And then there's the Murray patent, which you've already referred to during your direct examination, correct?

A. Yes, sir.

Q. And that's DX --

MR. BECK: Can we put that up on the screen? That may be DX1, but I'm not positive.

And what's the number? I'm sorry.

526, Your Honor, for the record.

Q. (By Mr. Beck) And this is a patent issued to Mr. Kenneth Murray of Littleton, Colorado, along with two other people from Tennessee, right?

And this was filed -- the application was filed September 18, '92; the date of the patent was March 2nd, 1993, correct?

A. Yes, sir.

Q. And then the abstract says, it's a hypodermic safety syringe, according to the present invention, includes a barrel having an open end, a cone-shaped end, and interior surface. A hollow needle and carriage assembly is temporarily attached and is restrained by four catches extending from the interior tapered surface.

Did I read that correctly?

A. Yes, sir.

Q. Now, your '733 patent that the jury's heard about was issued when? In 1997?

A. (No response.)

Q. And the record will reflect precisely when it was?

A. Yeah. Could we --

Q. Let's just say roughly May of 1997. Is that a fair approximation?

A. Well, why don't we just --

MR. BECK: Let's put it up.

Okay. Can we put up the '733 patent, just so there's no question about it?

Q. (By Mr. Beck) Shows it was issued on May 27, 1997, correct?

A. Yes, sir.

Q. And the ladies and gentlemen can see. That's your '733 patent, right?

A. Yes.
Q. And then your '077 patent wasn't issued until more than three years later, which would be July 18, 2000.
MR. BECK: If we can bring that up so Mr. Shaw can see it, too, please. And this is DX3.
Q. (By Mr. Beck) And this patent was issued, the '733 -- excuse me.
This is the '077 patent and was issued on July 18, 2000, to Mr. Thomas J. Shaw; is that correct?
A. Yes, sir.
Q. And then your '26 -- your '224 patent wasn't issued until April 1st of just last year, right?
MR. BECK: Let's put it back up.
A. I don't know if there's any significance to me saying yes and having it turn out it's not right, so I would just rather have it up there.
Q. (By Mr. Beck) All right.
MR. BECK: Well, let's put it up there.
Q. (By Mr. Beck) This is your '224 patent issued to Thomas Shaw. And it shows the date of the patent is April 1, 2008, correct?
A. Yes, sir.
Q. These are all examples of what we've been referring to during the course of this trial as prior

art; is that correct?

A. Well, just now you've named mine and said you're referring to it as prior art. You mean the other ones before the 3?

Q. That is correct. The ones before your patents are what we've been referring to during this trial, so that the jury might know, as prior art.

A. Yes, sir.

Q. All right.

MR. BECK: Now, if we can bring up DX3, and specifically Column 1, Lines 48 through 52.

Judge, can I step over here? I can't read this.

THE COURT: Yes.

Q. (By Mr. Beck) you recognize this as being from one of your patents, right?

A. Yes, sir.

Q. And what you're talking about are: The other problems with the prior art are dependence on flexing or breaking of internal parts by the plunger in order to release the retraction mechanism and use of a diaphragm at the end of the plunger, which must be penetrated by a needle-holding member and spring, correct?

A. Yes, sir.

Q. And that was what you were representing to the

Patent Office about the prior art --
A. Yes, sir.
Q. -- and the problems with the prior art.
A. Yes, sir.
Q. And what you were trying to tell the Patent Office is that what you wanted was a patent, because what you had come up with was different, right?
A. A different way of handling the problems --
Q. Yes.
A. -- but --
Q. Go ahead. I'm sorry. I didn't mean to cut you off.
A. Okay. If you look at the more important sentence above it, it says: One of the problems of prior art of retractable syringes is the sheer number and complexity of parts.
Q. All right.
A. I still have multiple parts.
Q. I understand that.
A. I didn't make that go away. I handled them better in a way that made them manageable. I'm not saying I made those problems go away; I'm saying I handled them in a way that made the syringe functional.
Q. What you refer to is one of the problems; the next sentence talks about other problems, correct?

A. Okay.

Q. And let's look now at Column 2, Lines 18 through 26.

Now, you would agree, would you not, that your -- that an invention in a patent is what is set forth in the claims, correct?

A. No, sir. I'm probably not qualified to do that. But I believe it includes the description, the drawings, and everything we have to give to the Patent Office in order to look at the entirety of the -- the document in order to determine what the invention is.

Q. Did you testify in your deposition that the elements of the claim actually determine the invention?

A. If I did, I'm sure you could check with an attorney. I'm not one. But I doubt whether or not I'd have to turn in all this stuff to the Patent Office if it was simply the claims. I think it's in the context of the rest of the document.

Q. Did you testify in your deposition that that was your understanding?

A. Can I testify today that I'm not an attorney?

Q. I think the jury knows you're not an attorney, and --

A. Okay.

Q. -- we're not going to hold you to a legal opinion. But your understanding, as a layperson and as an inventor, is that the elements of the claim in the patent are -- is what actually defines the invention.

That's your understanding, is it not?

A. If you're asking me my understanding, is it okay for you to -- for me to tell you?

Q. What I'm asking you is whether or not you testified under oath about your understanding of what the outline of a patented invention is, and specifically, did you testify that your understanding was, under oath, that the elements of a claim in the patent really define and set forth the boundaries of an invention.

Do you remember testifying to that?

A. I -- I don't remember saying it, but I'm sitting here right now, and I can tell you what I believe it is, and that is, the claims define what I believe are the elements of the patent.

But if there's confusion or if there's not clarity, then you look at the rest of the document to determine what the claims mean. I'm not saying that's right. That's been my understanding.

Q. All right. Let's start first with the elements of the claim setting forth the invention, and then we'll get to the -- if there's any confusion or not.

Just so we're clear, in layman's terms, for the jury to determine what your invention is, they start out with what the claims set forth in the patent are, correct? That's your understanding, first step in your understanding.

A. Okay.

Q. All right. And is it not true that of the claims you are asserting, the claims of infringement against my client, that you're asserting ten patent claims. You're saying that somehow my client infringes on ten of the patent claims that you have asserted.

A. Yes, sir.

Q. And eight of those ten claims that you're asserting, Mr. Shaw, include the term retainer member, do they not?

A. I'll take your word for it. I mean, if that's accurate, that's fine.

Q. All right. And you know that His Honor has defined and told us what retainer member means.

You know that.

A. Where we are now, yes.

Q. All right.

A. And that becomes what the claims mean is what -- what -- what he has --

Q. Judge Folsom.
A. Yes. I know it's the Judge. I'm not sure how to address him completely properly, but --
Q. His Honor.
A. His Honor.
Q. His Honor.
A. Okay. His Honor. I'm sorry. I probably just -- this is over for me already.
THE COURT: Judge Folsom will be fine.
Q. (By Mr. Beck) All right. With that introduction, let's go to the next part of your patent here.
And in trying to tell the Patent Office what you came up with is different, you say prior art has not recognized a retraction mechanism with separable parts that relies entirely on clamping force or friction at a smooth-walled reduced diameter transition zone in the barrel with mating lands, which are slidably or separately released, in response to a relatively low thumb pressure while having resistance to premature retraction and high blowout pressure resulting from high pressure produced in the fluid chamber during an injection, correct?
A. That's what it says.
Q. And that's what you're representing to the

Patent Office in order to get your patent, correct?
A. Yes.
Q. You're telling them that the prior art -- what you have come up with is different from the prior art, correct?
A. Certainly what I came up with is different from the prior art.
Q. And is it not correct that to overcome what you believe were the problems and the difficulties in the prior art, that you made a change in the design that didn't utilize some of the features of the prior art.
Fair statement?
A. I'm a little more comfortable with I put together a combination of solutions that resulted in something that would handle the hydraulic and mechanical forces.
Q. Well, again, you remember being asked in your deposition specifically -- and if you want me to approach with it, I'll be glad to do that.
You remember being asked, and I quote --
MR. BECK: Counsel, this is Page 67, Line 21.
Q. (By Mr. Beck) QUESTION: You had to overcome difficulties with breaking of internal parts and penetration of a diaphragm at the end of the plunger?

Do you recall being asked that?
A. I don't recall being asked that, but I -- I agree I had to overcome those difficulties, and I did --
Q. All right.
A. -- by design of the part I made.
Q. And that's my point. You testified in your deposition, yes, you did have to overcome them, correct?
A. Yes.
MR. HARDIN: Counsel, can we have the whole answer read, please?
MR. BECK: Sure.
Q. (By Mr. Beck) QUESTION: You had to overcome difficulties with breaking of internal parts and penetration of a diaphragm at the end of a plunger.
ANSWER: Yes. And I did overcome them by making designs that didn't utilize some of those features to some extent. You can't make anything in the world of science that doesn't have some flexing.
Everything flexes when you move it.
And that is a correct statement; is that -- is that not true?
A. Yes.
Q. Now, I want to change subjects slightly.
The patent claims that you are asserting in this case do not have a threaded attachment as part of

the needle assembly; is that not correct?
A. The patent claims, I don't think they address -- I don't think they limit. I think they talk about frictionally held, and so I -- are you asking me if the word threading appears in the patent?
Q. What I'm asking you is whether or not the patent claims that you're asserting in this case -- I'm talking about your patent claims you're asserting -- they do not have a threaded attachment as part of the needle assembly, do they?
A. They do not restrict in any way from being able to use a threaded attachment as part of the needle assembly. There's nothing in there that would restrict that.
Q. No, sir. I didn't ask you whether it restricted it. I asked you whether or not the claims that you're asserting in this case say anything about a threaded attachment as part of the needle assembly.
Did they say anything about it?
A. The word threaded is not in the claims.
Q. The Integra 3mL does have a threaded attachment, does it not?
A. Yes, sir.
Q. The patent claims you are asserting in this case do not have a removable needle assembly; is that

not correct?

A. It doesn't restrict from whether or not -- it doesn't -- it doesn't say you can't have a removable assembly.

Q. No, sir, I didn't ask you that.

My question is: Do the patent claims you're asserting in this case, those patent claims, they do not have a removable needle assembly? Talking about the claims. They do not have a removable needle assembly, do they?

A. I think they imply that anything that fits within the claims. I'll -- when you ask me, I will tell you I don't believe the word removable is in there.

Q. Mr. Shaw, did you testify under oath in January of this very year that the claims we're asserting in this case do not have a threaded attachment in here? Did you testify to that?

A. I don't think I -- I'm sitting here now and I'm telling you I don't believe the claims are restricted from anything, unless it's restricted through the claims, which I believe the Court has made a determination of what those claims mean.

Q. No, sir. Maybe I asked the question poorly. That's not my question.

THE COURT: Mr. Shaw, if you'll listen

carefully to the question, I think this will move along quickly. Then, obviously, Mr. Hardin can follow up with redirect.

Listen to the question.

Q. (By Mr. Beck) My question to you is: Did you testify under oath as early as January of this year that the claims we're asserting in this case do not have a threaded attachment in them? Did you testify to that?

A. If it says I did, I did.

Q. All right. That's -- the Integra 3mL does have that threaded attachment, does it not?

A. It has a connection, yes.

Q. And the Integra 3mL has a removable needle assembly, does it not?

A. Yes, sir.

Q. That's a difference between your patent claims and the Integra 3mL; is that not correct?

A. No, sir.

Q. You disagree with that?

A. Yes, sir.

Q. All right. Let me talk a little bit on the way how the needle is released, okay, in your invention.

First, would you agree that just because two pieces in a needle assembly of a retractable syringe touch does not mean that there is a frictionable holding

mechanism as defined in your patents?
Would you agree with that?
A. If they touch hard, yes. If they barely touch, very little, it's a degree.
Q. Right. And that's my point. The mere fact that if two -- if you put your hands together, there's some friction, right?
A. Right.
Q. Okay. So that anytime you've got two objects that are together, there's going to be some amount of friction; may be minimal, but there's going to be some, right?
A. Correct.
Q. Now, we looked a few moments ago at the Botich '599 patent.
A. I do want to -- excuse me -- but I don't want to -- if there's a lubricant in there, it could be very minimal. If you just (indicates) -- I mean, I don't want to be on the record saying something that's not correct.
I mean, you could have two surfaces with a lubricant, and with a lubricant, there would be essentially no friction.
Q. All right. I'm not talking about lubricants. I'm not talking about lubricants.

Now, the Botich patent. The Botich patent described a retractable syringe where they actually had hooks that held the needle-holder before retraction, correct?
A. Correct.
Q. And there are certainly some friction present in the Botich syringe, is there not?
A. There is no Botich syringe, if you're saying in the Botich patent.
Q. Well, that's just -- let me use the word patent.
There is some friction present in the object that is the subject of the Botich patent.
A. Yes.
Q. All right. But even though there's some friction present when hooks hold a needle-holder, as in Botich, that's not a frictional mechanism, is it? Not a frictional retainer mechanism?
A. You know, it would help me a lot on this, because I don't want to -- why don't you take me to the picture of the Botich patent, show me the hooks, show me where they're touching, and let's get this right.
Q. What if I show you your deposition testimony under oath; would that help you?
A. Well, sure.

MR. BECK: Counsel, Page 236, Lines 12 through 17.

MR. HARDIN: What's the date?

MR. BECK: It's January 13, 2009.

Q. (By Mr. Beck) Mr. Shaw, do you see at the top of the page -- I'm talking to you about the Botich '599 patent.

You said you have seen copies of the Botich patent before.

A. Yes.

Is this in January of this year?

Q. Yes, sir. Do you see it?

A. I don't believe you were the one that did this deposition.

Q. It doesn't matter who took the deposition.

A. Okay. Okay.

Q. It's your testimony under oath, right?

A. I'm sorry. I was trying to help.

Q. And the question at Line 12 is: And do you believe that these hooks operate as a frictional holding mechanism?

And you say: Primarily, they do not act as a frictional holding mechanism. Primarily, they operate that you pull the hooks apart, and then the needle-holder goes through that.

Correct?
A. Yes, sir.
Q. And that's a true statement, is it not, sir?
A. Yes, sir.
Q. So just because you have hooks doesn't mean that's a frictional retraction mechanism; is that not correct?
A. Yes, sir.
Q. Now, whenever you were developing your VanishPoint, you looked at Becton Dickinson's standard syringes, did you not?
A. Yes, sir.
Q. And you didn't see anything wrong with that, did you?
A. With the syringes?
Q. No. Looking at the syringes whenever you were developing the VanishPoint?
A. No, sir.
Q. I assume you bought them at a store or got them in the marketplace somehow.
A. The local pharmacist gave them to me.
Q. Okay. Now, the jury's heard about this company called Saf-T-Med, and I believe you told the ladies and gentlemen of the jury that you had obtained from Saf-T-Med one or more of their syringes; is that

correct?

A. Yes, sir.

Q. And I believe you've already told us that Lillian Salerno -- by the way, so the jury might know, what was her position with the company at the time?

A. She was the COO, Chief Operating Officer.

Q. Chief Operating Officer of the company?

A. Yes, sir.

Q. And you told the ladies and gentlemen of the jury that when you found out she had actually misrepresented her -- in fact, she used a different name, too, didn't she? Used the name Vickie Jenkins?

A. Yes, sir.

Q. Told the people over at Saf-T-Med, who were trying to come up with a syringe, that her name was Vickie Jenkins, and asked them to please send some samples because she was interested in them, to send them to this doctor's office, right?

A. That's --

Q. That's your --

A. -- my understanding from reviewing documents. I wasn't there. But that's what I believe.

Q. And the doctor's office was one of your board members, right?

A. Yes, sir.

Q. And so the -- after misrepresenting herself as a woman named Vickie Jenkins, these syringes from Saf-T-Med were sent to Dr. Shiu's office. I guess Vickie Jenkins in care of Dr. Shiu's office. And that's how you -- and I mean, you, RTI, got copies of Saf-T-Med's syringes, correct?

A. That's where it starts getting a little fuzzy. Since I wasn't there, I don't know who it was addressed to. All I know is what was represented to me and what I've been reading from and hearing from others.

Q. Okay. You told the jury that you told Lillian Salerno that's not the way we do things, and she shouldn't do it.

But so that the jury also might know, once you got those; you took them apart, correct? Inspected them?

A. That was prior to me knowing how they were obtained.

Q. You inspected them after you got them, correct?

A. Yes, sir.

Q. You took them apart?

A. No, sir.

Q. You -- you triggered the retraction mechanism, did you not?

A. Yes, sir.
Q. Do you remember testifying in your deposition that you did trigger the mechanism and you did take it apart to some extent?
A. Yes, sir.
Q. So you did take it apart to some extent?
A. Yes, sir.
Q. All right. Now, not only did you look at it, but you had a man named Bob Stathopulos -- and I may be mispronouncing that name -- am I correct?
A. No, that's not correct.
Q. Do you remember being asked in your deposition on January 12th, 2009: Do you know whether the syringe was sent to Mr. Stathopulos -- again I may be mispronouncing that -- in New Jersey or whether he saw it on site at RTI?
And do you remember saying and I quote: I feel pretty confident he would have seen it at Little Elm.
Do you remember testifying to that?
THE COURT: What page is this, Mr. Beck?
MR. BECK: It's Page 181, Your Honor, Lines 3 through 7.
Q. (By Mr. Beck) Remember testifying to that?
A. Yes, sir.

Q. So he did see it in all likelihood, correct?
A. I don't know.
If I explain, then I think you'll understand, and it will clear it all up.
Q. Well, you did testify that he did see it. That's what you testified in January of this year.
A. I think I testified that if he saw it, more likely he saw it in Little Elm, because I knew I hadn't sent it to New Jersey.
Q. Yes, sir. You felt pretty confident he would have seen it at Little Elm.
A. If he -- I was told that he had seen it. If he saw it, it would have been Little Elm.
Q. And tell the jury who he is. He is a consultant with a product development technology company, is he not?
A. I think he was a sole proprietor -- he worked for himself.
Q. He was a consultant to you-all, was he not, sir?
A. Yes, sir.
Q. You also had a man named Tod Hewitt looked at the Saf-T-Med syringe, did you not?
A. I don't know if he looked at it.
Q. Did you testify in January of this year that

he looked at it, too?

A. I believe what I testified is we sent a list to the attorneys of everybody who might possibly have seen it. And I don't have any knowledge that these other people saw it. But we made a thorough attempt that anybody who may have seen it would be on the list. I believe that's what I testified to.

Q. All right. Well, let's go at it that way in the interest of time.

Tod Hewitt was on the list, wasn't he?

A. Yes, sir.

Q. And he's a design engineer at RTI, correct?

A. Yes, sir.

Q. Jim Hoover was on the list that looked at the Saf-T-Med syringe, correct?

A. I don't know if he saw it, but he's on the list.

Q. He's your production manager, isn't he?

A. Yes, sir.

Q. A man named Gary Wood looked at the Saf-T-Med syringe, or he was on the list?

A. Yes, sir.

Q. And, of course, Lillian Salerno, your Chief Operating Officer she looked at it, and she was on the list, correct?

A. Yes, sir.

Q. And you told the jury about the letter that your lawyer sent to the lawyer for Mr. Erbs and how Mr. Erbs' lawyer sent the letter back, correct?

Didn't you tell the jury about that a little earlier in the day?

A. Our lawyer sent a letter to Jim Erbs, and Jim Erbs' lawyer sent a letter back to our lawyer, I believe.

Q. All right.

MR. BECK: Let me see DX13, please.

Let's let the jury take a look at these.

THE COURT: We're about to look at Exhibit 13?

MR. BECK: Yes, sir.

THE COURT: Do you want Instruction No. 3 read?

Limiting Instruction No. 3, and, likewise, you will be given a copy of this. You will see Defendant's Exhibit 13, and you may hear testimony regarding that exhibit. You should not consider Defendant's Exhibit 13 in determining infringement or invalidity.

Defendant's Exhibit 13 is admitted for

the limited purpose of rebutting Plaintiff's allegations that any infringement was willful.

Q. (By Mr. Beck) Now, this letter marked as Defendant's Exhibit 13 was your lawyer's letter to Mr. Norvell, who is Saf-T-Med's lawyer, or Jim Erbs' lawyer, right?

A. I'm sorry. Could you tell me what your question was one more time?

Q. I will be glad to.

This letter is a letter from Mr. Harry Watson, correct?

A. Yes, sir.

Q. And Mr. Harry Watson is your lawyer, RTI's lawyer?

A. Yes, sir.

Q. And he's your patent lawyer?

A. Yes, sir.

Q. And you approved this letter before it went out, did you not?

A. Yes, sir.

MR. BECK: And if we may look about the third -- actually, it's the last paragraph on the page.

Q. (By Mr. Beck) This was after the people on that list inspected, looked at, and to some extent at least, took apart the Saf-T-Med syringe and triggered the retraction mechanism.

And what your lawyer is telling Saf-T-Med is: Be assured also that our client -- which would be RTI -- has no desire to use the concept disclosed in the McGary patent, which is embodied as expected in the Saf-T-Med syringe.

That's one of the things that you approved before it went out, correct?

A. Yes, sir.

Q. So no question that the Saf-T-Med syringe you-all were looking at encompassed the McGary patent?

A. The -- the concept that was disclosed -- we're talking about a concept that was disclosed in the McGary -- McGary patent and that was that slidable seal. We had no interest in that slidable seal.

Q. Okay. So you say: Our client has no desire to use the concept disclosed in the McGary patent, which is embodied as expected in the Saf-T-Med syringe, correct?

A. Correct.

Q. And then the lawyer for the other side wrote back. And that's DX14, correct, sir?

See, this letter is dated May 8th from 1997 from Mr. William C. Norvell to Mr. Harry Watson, your lawyer.

A. Okay.

Q. And if we can look at the second page, the first full paragraph starting out, thirdly. It's that first sentence.

And after receiving your lawyer's letter, the lawyer for Saf-T-Med writes back: Thirdly, we appreciate your acknowledgement in the last paragraph of Page 1 of your letter -- which we just looked at -- that Saf-T-Med, Inc., has not employed any technology of Retractable Technologies, Inc.

Do you see that, sir?

A. Yes, sir.

Q. And you agree with that, do you not?

A. No, sir. That's written by Mr. Erbs' lawyer, not my lawyer.

Q. And did your lawyer ever respond and say no, no, no, no, that's not quite correct; we think you do? That never happened, did it?

A. Mr. Erbs didn't have a product at the time, and we were trying to avoid litigation. And he asked me to write a letter, CEO to CEO, and try to calm the situation down.

Q. You had their prototype, did you not? The Saf-T-Med prototype, you had it?

A. Yes.

Q. You looked at it or people under you -- people with the company looked at it and took it apart to some extent?

A. I think I testified that I took it apart to some extent. I don't know that the other people saw it, but we put on the list everybody who might remotely have seen it.

Q. And after receiving this letter from Saf-T-Med's counsel saying: We appreciate your acknowledgement in the last paragraph of Page 1 of your letter that Saf-T-Med has not employed any technology of RTI, nobody from RTI, not you, not Lillian Salerno, not Mr. Watson or anybody ever wrote back and said that's not right, you are using some of our technology. We saw it in the prototype.

That never happened, did it?

A. We never sent a letter.

Q. Now, you became aware at some point that Becton Dickinson purchased the Saf-T-Med technology, correct?

A. Yes, sir.

Q. Which included the Shaw patents; is that not correct?

MR. BECK: I'm sorry. It's been a long day.

THE WITNESS: It's getting late for me.
MR. BECK: I know that confused the jury.
THE WITNESS: It confused me.
MR. BECK: Long day. Sorry.
Q. (By Mr. Beck) You know that when Becton Dickinson purchased Saf-T-Med that it acquired the McGary patent? You know that?
A. (No response.)
MR. HARDIN: BD-owned, Patent Instruction No. 5, Your Honor. We request --
THE COURT: Now I will give you Instruction No. 5.
You will hear evidence concerning patents owned by BD. The fact that BD has obtained patents is not a defense to any alleged infringement in this case. The Court admits such evidence for the limited purpose of rebutting Plaintiff's allegations that any alleged infringement was willful.
Mr. Beck, before we go into this topic, would it be a convenient --
MR. BECK: Yes, sir, if you would.
THE COURT: Why don't we let the jury step out, Mr. Potts.
COURT SECURITY OFFICER: All rise.
(Jury out.)

THE COURT: Mr. Beck, Mr. Hardin?

(Bench conference.)

THE COURT: Just a second till they're out.

MR. BECK: Judge, you ought to be able to just hold up sign one for the --

THE COURT: Is this all 5-0 now? Have we covered all of 5-0?

MR. HARDIN: I think -- I think they get one. I think it's theirs.

THE COURT: I say let's give it to them. Just say 1, 2, 3, 4, 5.

All right. I'll just mention, the 60 Minutes' segment, I don't think it violated any of the limine order, but you want me to do anything more --

MR. BECK: No. He's dropped it. He's dropped it. We're not --

THE COURT: I don't want to bring any attention, unless you want me to.

MR. BECK: No, no, no, no, no. No, sir. No, sir.

THE COURT: I'm going to give my normal instructions not to do any investigation. I just hate for them to jump on the computer --

MR. BECK: Getting on the internet.

THE COURT: -- and go to 60 minutes. I don't know.

MR. BECK: That might not be bad to mention.

THE COURT: Well, you need to give it some thought, because I'm not going to -- as I mentioned to you, I'm not going to --

MR. BECK: Okay.

THE COURT: I won't mention it to you and let you decide if you want any additional instruction.

MR. BECK: Okay.

THE COURT: But I can -- if they follow my instructions, they shouldn't do that --

MR. BECK: They won't do it.

THE COURT: -- you know.

We'll be in recess.

MR. HARDIN: Thank you, Your Honor.

THE COURT: Mr. Beck, how much longer do you anticipate?

Mr. Hardin, if you want to hear this.

MR. BECK: 15 or 20 minutes.

THE COURT: Okay.

(Bench conference concluded.)

(Recess.)

COURT SECURITY OFFICER: All rise.

(Jury in.)
THE COURT: Please be seated.
You may continue with cross-examination.
MR. BECK: Thank you. Thank you, Your Honor.
Q. (By Mr. Beck) I think where we left off, we had talked about how you became aware of the fact that Becton Dickinson had acquired Saf-T-Med.
You also became aware, did you not, that Becton Dickinson had obtained a license from a company called Med-Design. You became aware of that, also, did you not?
A. Yes, sir.
Q. I think you've also told the Ladies and Gentlemen of the jury that your company, RTI, went public, correct?
A. Yes, sir.
Q. And you went public in the year 2000; is that right?
A. Yes, sir.
Q. Now, what that means is that when you went public, that means that people can buy your shares. In other words, people -- the public generally can buy stock in your company, correct?
A. Yes, sir.

Q. And you're listed on the American Stock Exchange; is that right?
A. Yes, sir.
Q. And you know, do you not, that a publicly held company in this country has to make certain filings with the Securities and Exchange Commission.
A. Yes, sir.
Q. And you know that whatever filings are made, the representations that the company makes must be true.
A. Yes, sir.
Q. And there are penalties, if they're not true. You know that.
A. Yes, sir.
Q. And for example, the 10(k), which is one of these publications that your company files with the SEC, you, as the CEO, have to sign them, do you not?
A. Yes, sir.
Q. And you've got to certify that certain things are accurate and true, correct?
A. Yes, sir.
Q. That's part of what we all know as the Sarbanes Oxley law that was passed after the Enron deal, right?
A. Yes, sir.
Q. Now, as part of a publicly held company, you

periodically have communications with financial analysts that follow your stock, right?
A. Periodically, yes.
Q. Yes. And you have conversations with them, do you not?
A. Yes, sir.
Q. And part of those conversations, the purpose of them is to allow them to ask you questions about the company so they can get an idea about how the company's doing and how it's likely to do in the future, right?
A. Yes, sir.
Q. And you participate personally as the CEO in those conversations, correct?
A. I have.
Q. And you had a conversation with a Mr. Black with Paine Webber -- and he's a financial analyst. You know him, do you not?
A. I believe I only talked to him maybe once or twice.
Q. All right. And Mr. Black with Paine Webber, you had a conversation with him in August, I believe of the year 2000; is that right?
A. If -- if that's what -- yes, if that's what -- well, I don't know when it was.
Q. All right. Well, whenever it was, it was

after, was it not, you had seen the Saf-T-Med prototype?

A. If there was in that conversation discussion about me having seen it, yes.

Q. And there -- this was after BD had acquired Saf-T-Med and taken a license from Med-Design.

A. Without the conversation, it may have been represented to me that that had happened from them, and I may have been inquired as to what I thought about that, and I may have responded to that.

I don't have any personal knowledge of when Saf-T-Med acquired -- excuse me -- when Becton Dickinson acquired what they acquired or the extent of what they acquired. I just don't have that information.

Q. You told the jury earlier in your testimony that there's such a thing as a 510(k) that you must file with the Food and Drug Administration if you want to market a safety product like a medical device?

A. Yes.

Q. And you've done that for VanishPoint, right?

A. Yes.

Q. And you actually got a copy of the 510(k) that Becton Dickinson filed for the Integra, did you not?

A. Somebody on our staff.

Q. All right. And do you remember that during this conversation that you had with this Mr. Black, this financial analyst with Paine Webber, you specifically talked to him about Becton Dickinson's 510(k) for the Integra, did you not?

A. It would sure help me if you had the conversation.

MR. BECK: May I approach to refresh his recollection?

A. It's been 10 years.

Q. (By Mr. Beck) This is Deposition Exhibit 68 for reference. See where it talks about a call between Thomas Shaw, Doug Cowan, and Ian Black at Paine Webber on August 22nd at 4:38 p.m.? Do you see that?

A. Yes.

Q. And Doug Cowan is your chief financial officer?

A. Yes, sir.

Q. Now, in your conversation -- and let me just refresh your recollection with this, Mr. Shaw. T.J.S., those are your initials; is that correct?

A. Yes, sir.

Q. And you say, and I quote, they did a 510(k). Now, they there is Becton Dickinson; is it not?

A. Is it okay --

Q. Sure.

A. -- to look at it in --

Q. Absolutely.
MR. HARDIN: Counsel, I'm sorry. Can I have the date of the deposition?
MR. BECK: It's not a deposition. It's Deposition Exhibit 68.
MR. HARDIN: Oh, I'm sorry.
MR. BECK: I'm just using it to refresh his recollection.
A. Okay. I guess I'm referring to Becton Dickinson. It doesn't say that, but it looks like it implies that.
Q. (By Mr. Beck) And do you remember testifying in your deposition that was who you were referring to, Becton Dickinson?
A. In -- in one of the depositions?
Q. Yes, sir.
A. I'm okay with that.
Q. All right.
A. I mean, I don't know that it wasn't.
Q. All right. And what you say is: They did a 510(k), and there's a couple of problems with the 510(k).
First, it's for, not the Med-Design approach, but actually the Saf-T-Med approach.
Now, that's something you told Mr. Black; is

that correct?
A. Yes, sir.
Q. And somebody says, Right.
And then you follow up and say: Which is a cutting tool.
And then you continue: And then the Med-Design would allow them -- which is Becton Dickinson, I take it -- to change needles, but what they submitted to the 510(k), based on what we got from the FDA on their 510(k), shows that it is a cutting -- it has a cutting tool in it.
And you remember telling that to Mr. Black, right?
A. I'm reading it. Okay.
Q. And so if there was any value of the original patent at all, maybe it's just this part about changing needles, which would mean that it would expire with the '89 patent deal.
Now, you were talking there about the Med-Design patent, correct?
A. That -- that seems right.
Q. All right. And you were telling Mr. Black these things because you were trying to point out what you perceived to be the problems with what was in the Becton Dickinson 510(k) that was filed with the Food and

Drug Administration, correct?
A. I think in the context of that conversation, I was trying to point out to them that -- more likely, that Becton Dickinson was not using the Med-Design technology rather than what was in -- in 510(k)s, you do not have -- they redact them. You do not normally have a technical description of the product.
Q. I understand that, but you actually went further and said they're not using the Med-Design approach; they're actually using the Saf-T-Med approach, correct? That's what Becton Dickinson is using, correct?
A. Yes, sir.
Q. And then you focus on -- on the fact that that design is the cutting tool technology, right?
A. Yes, sir.
Q. Now, you also issued a press release, did you not, in February of 2000, that talked about the Becton Dickinson acquisition and the Becton Dickinson licensing, did you not?
A. A press release --
Q. Yes.
A. -- or a letter to my shareholders?
Q. A press release. Remember issuing a press release?

A. It's ten years ago. I --
Q. All right. Let's --
A. If you could just help me. I'm sorry.
Q. Yes, sir.
A. I'm just not -- I'm not --
Q. And that's fair. And that's fair.
MR. BECK: Let's bring up DX146. And I want to focus on the last sentence on the first page so the jury can see it.
Q. (By Mr. Beck) See where it's quoting you? It says: Although prototypes were produced in the early 1990s, production problems have thus far proved insurmountable. You say BD -- that's Becton Dickinson, right?
A. Yes, sir.
Q. None of the Becton Dickinson patent acquisitions incorporates the revolutionary and successful friction methodology utilized in the VanishPoint.
That's what your press release said in February of 2000, correct?
A. Yes, sir.
Q. And that was true at the time you issued it; is that not correct?
A. It -- yeah, but it doesn't refer to my

patents. It says that friction methodology used in the VanishPoint.

Q. Yes, sir. It's talking about the technology, isn't it?

A. Yes, that we're using, not -- not the patents.

Q. Yes, sir. What you're saying is that none of the Becton Dickinson patent acquisitions incorporate the revolutionary and successful friction methodology utilized in the VanishPoint.

A. Yes, sir.

Q. That was a true statement that was made, correct?

A. Yes, sir.

Q. So the jury has now seen not one, not two, but three different times when you've made representations to either financial analysts, to the public generally, or to a lawyer with Saf-T-Med that the Saf-T-Med technology is different than the VanishPoint technology, correct?

A. Than our product.

Q. Sir?

A. You're saying different than our product, not different than our patent.

Q. I'm saying different than the technology.

A. It says VanishPoint, and that's a product, not

a technology.
Q. Yes, sir.
A. It has technology in it.
Q. Exactly. That's my point.
A. But we have other technology. I'm trying to help you, but I -- I don't want to say something that's not accurate.
Q. Well, you don't make any exceptions in these three different statements you've made to three different people, have you?
A. Well, but I'm talking about what's in our product, and then you're turning it into what I own -- not I -- I've licensed, what RTI owns in technology, which is separate from the product. They're not one and the same.
Q. No, sir. My question is about technology. And you have repeatedly told people that the technology in your product is different than the technology that the Saf-T-Med product has; is that not correct? Isn't that what you're doing?
A. In our product, yes.
Q. All right. Now, you first saw an actual Becton Dickinson Integra syringe at least as early -- well, at least by early 2002, correct?
A. I believe that's -- somewhere around there is

when they finally got something to the market.
Q. And that was before your conversation with the financial analyst, Ian Black, right?
A. Did that have a date on it?
Q. It was August. And I'm not sure what year it said on the document itself.
A. Then without the year, I don't know how I can help you.
Q. So you're not sure?
A. Right.
Q. Okay. But if you saw the -- you filed this lawsuit in 2000 -- June of 2007; is that correct?
A. This current lawsuit?
Q. Yes, sir.
A. I believe that's correct.
Q. And that would be roughly more than five years after you first saw the actual BD Integra syringe, correct?
A. Yes, sir.
Q. Now, I've got a few more questions, and then mercifully, I'll be finished, okay?
A. Okay.
Q. All right. Now let's talk a little bit about your patents again.
The Integra 3mL has an inner and an outer

plunger, does it not?

A. The plunger's made out of two separate pieces. One fits inside the other.

Q. And Becton Dickinson calls them an outer plunger and an inner plunger, correct?

A. I -- I don't know what Becton Dickinson calls them. I don't -- my -- my concern is -- and again, it may sound like I'm trying to be too careful, but I don't think either part alone is a plunger. I think it takes both pieces to make a plunger.

Q. Well, there's nothing in your patents that discloses --

MR. HARDIN: Your Honor, may we approach please?

THE COURT: Very well.

(Bench conference.)

MR. HARDIN: There was a specific in limine requested on this point of a two-piece plunger.

THE COURT: I think in the claim construction, there was an order of the Court that it didn't have to be one piece.

MR. HARDIN: Right.

THE COURT: And I think there is a motion in limine --

MR. BECK: That wasn't what I was trying

to suggest.

THE COURT: Okay. I guess he's being very cautious. Where are you going on this?

MR. BECK: Basically, I just want to ask him whether or not there's anything that discloses the type of plunger that the Integra mL has.

MR. HARDIN: Well, Your Honor, that's just not -- that's not relevant. Again, that would say that the patent has to disclose every possible variation of these --

THE COURT: I think I'm going to sustain that. Let's move on.

MR. BECK: That's fine. Thank you, Your Honor.

(Bench conference concluded.)

Q. (By Mr. Beck) You talked about --

MR. BECK: Well, let's bring up B060, please.

Q. (By Mr. Beck) I just have a few questions I want to ask about a few particular demonstratives, and then as I said, I think I'm pretty much close to being finished.

What we're looking at here is a technology comparison, and you see that the first one is a Saf-T-Med syringe. That's been identified as a

Saf-T-Med syringe.

The second one is the -- out of the McGary patent, Figure No. 11.

And the third one is the Integra 3mL.

Can you see all of those, Mr. Shaw?

A. Yes, sir.

Q. All three of these have a cutter, do they not?

A. Yes, sir.

MR. BECK: Let's bring up B061.

Q. (By Mr. Beck) This is the Saf-T-Med syringe; this is the McGary Figure 10 and the Integra 3mL.

MR. HARDIN: No. 1 applies here, Your Honor.

MR. BECK: Just have a sign, Judge, that says No. 1.

THE COURT: I'm not going to re-read No. 1. And we'll try to have copies of these that have been given to you for your notebooks tomorrow.

MR. BECK: Thank you, Your Honor.

THE COURT: Limiting Instruction No. 1 applies to this line of questions.

Q. (By Mr. Beck) Each one of these has a detachable needle, the Saf-T-Med syringe, the McGary, Figure 10 in his patent, and the Integra 3mL; is that not correct?

A. Yes, sir.

MR. BECK: Let's bring up B062.

Q. (By Mr. Beck) This is the technology comparison, the needle assembly. On the left is the Saf-T-Med syringe; on the right is the Integra 3mL. Both have a four-part needle assembly, do they not? One, two, three, four. One, two, three, four.

A. I'm looking at four parts up there.

Q. All right.

MR. BECK: Let's look at the B063, please.

Q. (By Mr. Beck) And this is technology comparison core pin support holes. Saf-T-Med syringe on the left; Integra 3mL on the left -- on the right, rather.

Both of these have core pin support holes, do they not?

A. They have holes.

Q. All right. You're not going to say core pinholes; you just say they're holes?

A. I didn't see them molded. I'll take -- I mean, if that's what they are, that's what they are.

Q. Okay.

MR. BECK: Let's look at B050, please.

Q. (By Mr. Beck) Now, this is Figure 8 that you

told the jury about in your '733 patent, is it not?
A. Yes, sir.
Q. And this is the retainer member here (indicates), correct?
A. Yes, sir.
Q. This is the bridging portion (indicates), is it not?
A. That's one -- yeah. In that drawing, it is.
Q. All right. And the retainer member -- well, first of all, the retainer member has friction between the barrel wall and the retainer member, does it not?
A. Yes, sir.
Q. And is it not also true that during retraction, the retainer member moves or is pushed forward?
A. I don't know that.
Q. You don't know one way or the other?
A. Well, I have the option. I can either move it forward, or I can have something break the bridging member. There is -- there isn't anything in that drawing that tells you that it has to move forward. It could be either way. It's not restricted.
Q. In the product, does it move forward?
A. In your product?
Q. In the VanishPoint system.

A. It does not.
Q. All right.
A. In my product, we don't use the bridging portion.
Q. At all?
A. No, sir.
Q. Okay. Now, you mentioned to the ladies and gentlemen of the jury that during the 1990s, you submitted your technology to Becton Dickinson, correct?
A. In the early 1990s?
Q. Yes, sir.
A. Yes, sir.
Q. As a matter of fact, so the jury might know, you did it several times in the '90s, did you not?
A. Yes, sir.
Q. And Becton Dickinson eventually told you, not once but not twice -- but twice that they thanked you for your interest in trying to partner with Becton Dickinson, but they respectfully declined, correct?
A. Yes, sir.
Q. And you also knew that Becton Dickinson was not just looking at your technology but was looking at the technology of a lot of other companies with respect to a retractable syringe, right?
A. My knowledge about what Becton Dickinson was

looking at, outside of what we were doing, has got to be really limited, sir.

Q. Well, you knew about Med-Design, and you knew about Saf-T-Med, for example.

A. Yes, sir.

Q. You knew about that.

And you are aware, are you not -- and by the way, you were trying to partner up with other companies, too, not just Becton Dickinson, right?

A. In the early '90s, yes, sir.

Q. And Sherwood, for example, is a company that you tried to partner up with?

A. Yes, sir.

Q. And they respectfully declined after thanking you; is that right?

A. You know, I'd have to go back and review the exact details of that.

Q. All right. You told the jury about the plunger of the Integra 3mL and how it's inaccessible for grasping, and you remember being shown that at your deposition and being asked to see if you could pull out the thumb cap.

Do you remember that?

A. Yes, sir.

MR. BECK: Could we play that, please?

Q. (By Mr. Beck) That's technically not in evidence yet.
(Video playing.)
QUESTION: You ready? Can you pull the plunger out and show me the tip of the plunger, what it looks like?
ANSWER: Hmmm.
(End of video clip.)
Q. (By Mr. Beck) You were actually able to get it out, were you not?
A. Yes, sir.
Q. And you had actually gotten it out more than once, didn't you?
(Video playing.)
QUESTION: Pull it out and show me what the tip of the plunger looks like.
(End of video clip.)
A. I believe I was only given one product, is my memory of it.
Q. (By Mr. Beck) The Integra 3mL?
A. That was the Saf-T-Med, was it not? I mean, I'm not sure which film or what deposition or what I'm looking at out of context. It was -- if you would let it go -- maybe we could see what that was.
Q. Whichever one it is, you were able to pull the

cap out of it.
A. Yes, sir.
Q. It's not inaccessible for grasping, is it?
A. Yes, sir, it is inaccessible for grasping. It -- but that doesn't say that somebody couldn't pry it out.
Q. Okay. Now, you talked about briefly -- I want to mention briefly about the Murray patent.
The Murray patent disclosed vents, did it not?
A. Yes, sir.
Q. And Claim 10 in the '077 patent uses the term nearly fully depressed. Am I right on that?
A. That's my memory of it.
Q. And you testified under oath in your deposition that that language is not particularly helpful in a technical discussion, correct? It's a little bit vague?
A. I think there was more testimony about that. I said I preferred a two-position handle, but I believe later in the testimony, I also clarified that I thought the fully depressed position was when you got down there to where the plunger head was down near the front, and the more -- the further you went, the more fully depressed it was. And so rather than be a specific point as it approached, it became more fully depressed.

And for an engineer, my comfort for -- I was asked what specific position it was at. I think anybody would understand what fully depressed means. But if I'm asked at what point is it, then the stop of the two-position handle would allow me to measure that location.

MR. BECK: Let's bring up Page 35, Line 19 through Line 24.

MR. HARDIN: Which one?

MR. BECK: It's the same one, January 12th, 2009.

MR. HARDIN: Thank you.

Q. (By Mr. Beck) The question was -- can you see that, Mr. Shaw?

A. Yes, sir.

Q. It says, Question: Do you think it's unclear what exactly nearly fully depressed refers to? And your answer was: I think nearly is not very helpful in a technical discussion. Maybe that's because of my background in engineering, but what does nearly mean?

And then you talk about in the case of a car accident.

Do you remember testifying to that?

A. I'm -- I'm reading it with you.

Q. All right. And you're not denying that you testified to that, are you?

A. I -- I'm saying I believe there was more testimony about that, and I'd have to go through the deposition to show you, and I'm saying that I do think that even a layperson would be able to understand, from looking at the drawings, what's necessary to make the product.

MR. BECK: Let's bring up Page 50, Line 11 through Line 13.

Same deposition, Mr. Hardin.

Q. (By Mr. Beck) I had asked you earlier about whether the best description of what you invented are the claims in the patent, and let me remind you what you testified to under oath earlier this year.

At the top there, this is your testimony. Can you see that, Mr. Shaw?

A. Okay.

Q. I think the best description of what I invented are the claims in the patent, and I also think that is what we're entitled to.

That is a true statement, is it not?

A. As long as the claims in the patent are clarified either by the Honorable Judge, through a court ruling, or when there's doubt, by the descriptions that are in the patent.

The whole patent relates to the claims, is my understanding. But, again, I'm -- I'm not a lawyer. And after this week, I'm not sure I would want to be.

Q. Well, I guarantee you, I don't want to be a lawyer either, but I've got to be. It's too late now for me to change.

So the best description of what you invented are the claims in the patent. That's the starting point, is it not?

A. Starting point, yes, sir.

Q. Okay. Now, a couple of matters I want to clarify.

There was testimony earlier about how your main manufacturing facility is in Little Elm, Texas.

One of these documents you filed with the SEC, you tell them where your manufacturing facilities are, do you not?

A. Yes, sir.

Q. And in your 10K, for the year ending in 2008, you told them that almost three-fourths of your manufacturing capacity was in China, not Little Elm, Texas, correct?

A. We have no facility in China. What happened is, we were unable to raise funds in the United States, and the Chinese company put up money for tooling and capacity, and they own that facility. Our entire facility of what we own is in Little Elm, Texas.

Q. It says -- there's a company named Double Dove, which is a Chinese manufacturer, correct?

A. Yes, sir.

Q. And they manufactured, as of the end of 2008, approximately 74 percent of the units that you produced, correct?

A. Yes, sir.

Q. That's as of just the end of last year, correct?

A. Yes, sir.

Q. Now, I want to talk a little bit about your -- before we leave it, I've got two more subjects, and then I'm finished.

The legislation that you say that you spearheaded, what did that legislation do? Did it mandate that people had to use these safety devices?

A. Well, I think -- when you say I spearheaded, I think what -- if you mean our company worked with other people, it was a team effort. I don't -- I don't believe -- if I represented that we spearheaded that legislation, I certainly misrepresented the facts.

Q. Okay. There were a lot of people that did that, right? A lot of people involved in that effort?

A. Yes, sir.

Q. A lot of different companies involved in that effort, right?

A. I'm not sure what -- how much work the other companies did in that. My memory of -- my memory of it tells me that there were healthcare workers. The Service Employees International Union worked closely with us, and they were mainly responsible for it. And I believe early on, we were the only company that was helping them.

Q. All right. And the result of that legislation is what; that healthcare workers had to start using safety devices?

A. The intent of that legislation, I'd rather talk about, because it's got rules in it, penalties, and things that happened that maybe haven't happened, and so -- well, help me. Repeat your question.

Q. Yes, sir. My question is just very simple. Just generally, is the -- is the purpose of the legislation that was passed in California and elsewhere to mandate or require people to start using these safety devices?

A. Yes, sir.

Q. So that before the legislation, healthcare workers necessarily didn't have to do that, but after the legislation passed, then they would have to use safety devices, correct?

A. If they complied with the law.

Q. Right. Which would mean retractable syringes, correct?

A. Currently, I believe the effective technology that reduces the accidental sticks is the automated retraction syringes.

That doesn't mean something else might appear tomorrow that's different than that, but for right now, as far as I know, only automated retraction is limiting the sticks, and so I think you probably can conclude that.

Q. All right. Now, with respect to your -- what you have benefited from the sale of the VanishPoint, you told the ladies and gentlemen of the jury that you have a royalty on gross sales, correct?

A. Yes, sir.

Q. And it started out at 5 percent, and it eventually went up to 7 percent.

A. I believe I said that it was 5 percent of gross in my licensing agreement, but after we paid the rebates and what was necessary for the distribution fees we were having to pay, it turned out 5 percent of gross was 7 percent of the net of what the company received.

Q. Okay. You received an initial fee of 500,000, right?

A. Yes, sir.

Q. And the royalty that you negotiated, you really negotiated that with yourself, did you not?

A. Yes, sir.

Q. And under your license agreement with RTI, you will receive one-half of any monetary award this jury may decide to give in this case, correct?

A. Yes, sir.

Q. And with respect to the royalty, the 5-percent royalty, or whatever the royalty is on gross sales, you-all have sold, as I understand what you've reported, over $200 million in sales; is that correct?

A. I live by units, because I think in terms of how many nurses, but if you've got a document there, I'll be glad to validate it. If we produced it, I'll stand behind it.

Q. How many units would you approximate for the jury have been sold of the VanishPoint?

A. Last week when I checked, I believe we estimated 680 million units.

Q. All right. And what is the price of that?

A. It's all over the place. Some of it sold in the United States --

Q. Give the jury some range.
A. Well, it's different, whether it's sold in the United States or sold outside of the United States.
Q. Well, let's just talk about the United States. Give the jury some estimate of the price range from sales of VanishPoint in the United States, so the jury can calculate what we're talking about here.
A. They're not going to get there, because then I need to know the number of units I sold in the United States, and I just gave you the units that we sold total. And so I'm not going to be able to help you get to the number that way.
Q. Mr. Shaw, have you, in fact, made millions?
A. Yes, sir.
Q. No question about that, is there?
A. No question about that.
Q. And you've talked to the ladies and gentlemen of the jury about this BVS valuation, Business Evaluation Services, correct?
A. Yes, sir.
Q. Now, the -- your licensing agreement is what is called a running royalty, is it not, not a lump-sum royalty?
A. That's correct.
Q. It continues?

A. Yes, sir.

Q. And this valuation in this Business Valuation Service document that you talked about on your direct is based on a forecast of future revenues, is it not?

A. Yes, sir.

Q. And this very document says on Page 47, and I quote: Persons reading this appraisal should understand that the cash flows and valuations derived by our analysis are speculative in nature and may not be realized.

That's exactly what this says, does it not?

A. Yes, sir.

MR. BECK: That's all I have, Your Honor.

THE COURT: Redirect.

MR. HARDIN: We have no questions for this witness.

THE COURT: Very well. Mr. Shaw, you may step down.

Gentlemen, why don't you approach.

(Bench conference.)

THE COURT: What are you expecting next?

MR. HARDIN: About a half hour to 35 minutes of video deposition of some of the Becton Dickinson folks.

THE COURT: I was considering letting the jury go home. I know yesterday at the break, please tell the Judge we want to go home at 4:30. They might be doing a little better today, but I'm just thinking --

MR. BECK: Well, obviously, Your Honor, we will do whatever you want to do. If you've got 35 minutes, that will take us close to 5:00, but let them go --

MR. HARDIN: You want to let them go, that's up to the Court.

THE COURT: Well, we're going to have to burn some time, so let's just go ahead.

Now, given any thought to the instruction at the end of the day, you want any mention of the 60 Minutes?

MR. BECK: No.

THE COURT: Just my normal --

MR. BECK: Just your normal.

THE COURT: By the way, Mr. Keyzer, being the diligent clerk he is, that issue came up during the exhibits.

MR. BECK: That was when it came up.

THE COURT: Didn't allow the admission of the 60 Minutes.

MR. HARDIN: That's correct.

THE COURT: I didn't know. That's why I

didn't know about it. Very well.

(Bench conference concluded.)

THE COURT: Ladies and Gentlemen, we have about 35 minutes of deposition for you, and we'll go home, or at least the jury will.

Are you up to 35 minutes of depositions?

If you don't, we're going to start tomorrow watching them.

MR. BOWLES: Judge, we may watch them a little bit tomorrow, too, because there's about total 50 minutes of counter-designations.

THE COURT: Why don't we split it in half. Is it convenient to split it in half?

You know, I don't think we want to watch all 50 minutes of it today. Or would we rather let the jury go home and us work some?

Jury have any particular preference? Do you want to --

JUROR: Go home.

THE COURT: Go home.

MR. BECK: We could --

MR. BOWLES: We support that, Your Honor. So do I.

THE COURT: Realizing we will watch them tomorrow, if we don't watch them today, so if you want to go home -- it's been a long day. We have work to do.

And my staff and I appreciate being able to leave a little early, also. So I'll let the jury go home for the day with my normal instructions not to investigate this in any fashion. No online in any fashion. Everything I've told you previously about investigating this case.

We'll try to start promptly at 9:00 a.m.

Thank you.

COURT SECURITY OFFICER: All rise for the jury.

(Jury out.)

THE COURT: Have a seat.

Obviously, we're going to start with 50 minutes of depositions tomorrow.

What else might be expected?

MR. BOWLES: Your Honor, after that, we would call Walter Bratic, our damage expert.

THE COURT: Damage expert, yeah.

MR. BOWLES: And then Mr. Kozy, adverse.

THE COURT: What's left -- what theories are you going under by way of damages? Obviously, the lump sum royalty?

MR. BOWLES: Lump-sum reasonable royalty.

THE COURT: Lump-sum reasonable royalty?

MR. BECK: Yes, sir.

MR. DAWSON: We're not agreeing it's reasonable.

THE COURT: Anyway, your damage expert, the adverse witness.

MR. BOWLES: Then we will rest.

MR. CARROLL: Read some stipulations.

MR. BOWLES: Read some stipulations.

You know, we're going to have to make an order of proof at some point, Your Honor, before we offer the proof -- before -- before we rest, so...

THE COURT: What is that on?

MR. BOWLES: Well, that will be on some of the evidence that you've --

THE COURT: Excluded? You want to do it right now?

MR. BOWLES: Are we ready?

MR. HARDIN: It's a written submission.

MR. BOWLES: It's a written submission, Your Honor.

THE COURT: Is it ready to be --

MR. BOWLES: I don't think it is.

THE COURT: Just thought we would take care of some housekeeping matters.

MR. BOWLES: I wish it were. I apologize

to the Court.

THE COURT: Well, we will do that during a break or before we start tomorrow morning, whatever.

MR. BOWLES: All right, sir.

One other thing. One of the witnesses we're going to be playing tomorrow has some sensitive information that Mr. Dawson told me that they would like people not involved in the lawsuit to --

THE COURT: That are not subject to the protective order?

MR. BOWLES: That are not subject to the protective order, Your Honor.

THE COURT: To leave the courtroom? You need to let me know when that's going to take place, and we'll ask them to step out for that time period, and then we'll bring them back in.

MR. BOWLES: That will be great.

THE COURT: I mean, is it throughout the deposition, or is it in a selected portion?

MR. BOWLES: No, sir. And it's only seven minutes.

MR. DAWSON: I think it's the last deposition. If we could just excuse them during the entirety of the deposition, I think that would be preferable.

MR. BOWLES: That's the shortest one, that seven minutes.

THE COURT: That's fine.

MR. DAWSON: And, Your Honor, just so you know, that same issue is probably going to come up during Mr. Bratic or might come up during Mr. Bratic's testimony. It's the same sensitive information.

THE COURT: We can do that.

MR. BOWLES: Thank you, Your Honor.

THE COURT: Anything else? Is it reasonable to expect Plaintiff is going to finish your case tomorrow?

MR. BOWLES: Oh, yes.

THE COURT: Well --

MR. BECK: They're using up all their time.

MR. HARDIN: I was going to say by noon.

THE COURT: Four hours and 58, if you use too much on direct, the cross-examination will be very brief.

MR. BOWLES: What's our total right now?

COURTROOM CLERK: You have 4 hours and 59 minutes remaining.

THE COURT: How much time does BD -- do you have remaining?

COURTROOM DEPUTY: 9 hours and 22 minutes.

THE COURT: Too much time.

I guess I'm trying to decide is there any realistic expectation of us finishing the testimony Friday?

MR. DAWSON: We've got 15 hours left; you've got 3 days.

THE COURT: I'm trying to decide if there's any reasonable expectation that we will charge the jury Friday.

MR. BECK: I was actually -- that's what I was hoping, but I'm not so sure we're going to make it at this point.

THE COURT: Okay. We'll just see where we are. We'll start probably the jury instruction charge process, if not tomorrow afternoon, certainly Thursday.

And my practice is give you a copy of the charge and give you a chance to look over it overnight, sort of an informal process where, hopefully, at the end of the day, we may not have an agreed-upon product, but we're close.

Is tomorrow reasonable? Probably tomorrow afternoon. Give all your lawyers something to do tomorrow night.

If there's nothing more, we'll try to be here about 8:30.

COURT SECURITY OFFICER: All rise.

(Court adjourned.)

* * * *

CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

/s/________________________ ____________________
SUSAN SIMMONS, CSR Date
Official Court Reporter
State of Texas No.: 267
Expiration Date: 12/31/10

/s/____________________ ________________
JUDITH WERLINGER, CSR Date
Deputy Official Court Reporter
State of Texas No.: 731
Expiration Date: 12/31/10